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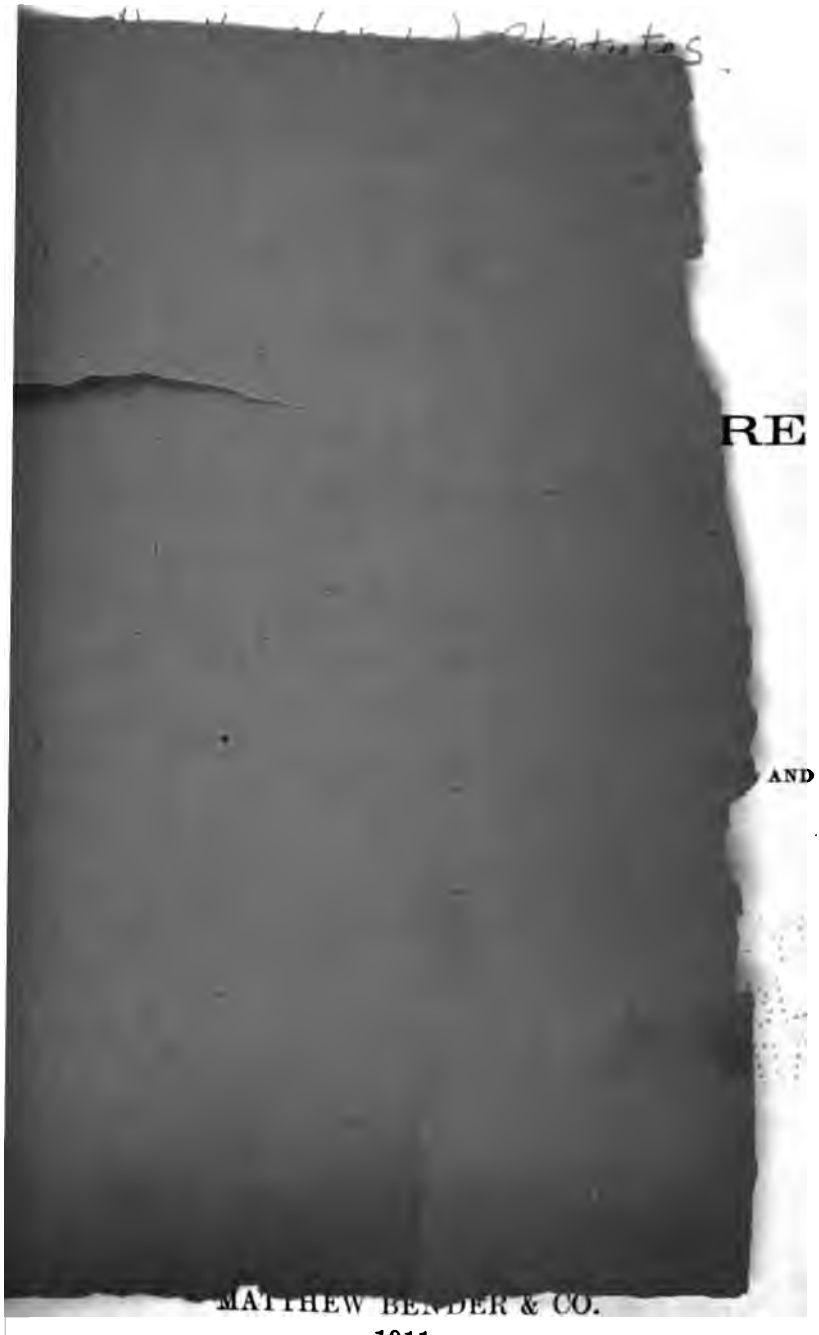
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BENDER'S EDITION



MATTHEW BENDER & CO.
1911

Sections of the Penal Law Amended by the Laws of to July 21

§	280	chap.	317	§ 1423	
§	421	"	759	§ 1500a new	
§	484	"	243	§ 1510 new	
§	517 new	"	410	§ 1563	
§	851	"	121, 602	§ 1572 new	
§	852	"	602	§ 1896	
§	857	"	121	§ 1897	
§	936a new	"	837	§ 1899	
§	950 new	"	575	§ 1914	
§	1221	"	700	§ 2074	
§	1250	"	625	§ 2151	
§	1275	"	749	§ 2414a new	

Sections of the Code of Criminal Procedure Am the Laws of 1911 to July 21

§	55	chap.	606, 809	§ 554, subd. 4	
§	456	"	667	§ 892	
§	458	"	667	§ 952p	
				§ 952q	

BENDER'S EDITION

New York (State) Statutes.

PENAL LAW

AND THE

CODE OF CRIMINAL PROCEDURE

OF THE

STATE OF NEW YORK

WITH ALL AMENDMENTS PASSED BY THE LEGISLATURE TO AND INCLUDING JULY 21,

1911

L 3. ch. 3

ALBANY, N. Y.
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TABLE I.

TABLE I,

SHOWING THE PROVISIONS OF THE REVISED STATUTES, SESSION LAWS AND CODE OF CIVIL PROCEDURE WHICH ARE CONSOLIDATED IN THE PENAL LAW.

	Penal Law Section.
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8 (pt.)	992
9	994
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16, 17	993
21, subd. 2	996
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25, 32	1383
33	1384
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L. 1885, Ch. 490, § 2	2370
L. 1885, Ch. 490, §§ 4, 5	2371
L. 1885, Ch. 490, § 7	2372
L. 1887, Ch. 711, § 9, pt	2195
L. 1891, Ch. 115, § 1	2370
L. 1893, Ch. 296	1082
L. 1894, Ch. 259, § 1	2240
L. 1894, Ch. 265	1030
L. 1895, Ch. 823, § 1, as amended by L. 1907, Ch. 297, § 1	2153
L. 1896, Ch. 112, § 40, pt., as amended by L. 1897, Ch. 312, § 28	1221
L. 1896, Ch. 112, § 40, pt., as amended by L. 1897, Ch. 312, § 28	1912
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L. 1897, Ch. 256, § 1	489
L. 1897, Ch. 312, § 28....1221,	1912
L. 1898, Ch. 165, § 4, as amended by L. 1899, Ch. 225, § 2	270
L. 1898, Ch. 325, as amended by L. 1900, Ch. 171	1757
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L. 1898, Ch. 671	1278
L. 1899, Ch. 225, § 2	270
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Code Civ. Pro., § 33	1790
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	Penal Law Section.		Penal Law Section.
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Code Civ. Pro., § 334.....	1634	Code Civ. Pro., § 1160.....	1236
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TABLE II.

SHOWING THE SECTIONS OF THE PENAL CODE AND THE SECTIONS OF THE PENAL LAW IN WHICH THEY ARE CONSOLIDATED.

Penal Code Section.	Penal Law Section.	Penal Code Section.	Penal Law Section.
1	1	41aa	753
2	22	41b	754
3	2	41bb	755
4	2	41c	756
5	2	41d	757
6	2	41e	758
7	20	41f	759
8	41	41g	760
9	31	41h	761
10	30	41i	762
11	21	41j	763
12	2188	41k	764
13	1931, 1932	41l	765
14	1935	41m	766
15	1937	41n	767
16	1930	41o	768
17	815	41p	769
18	816	41q	770
19	817	41r	771
20	1120	41s	772
21	1120	41t	773
22	1220	41u	774
23	34	41v	775
24	1460	41w	776
25	859	41x	777
26	42	41y	778
27	25	41z(a)	779
28	26	41z(b)	780
29	2	41z(c)	781
30	2	41zz	782
31	27	41zzz	750
32	1934	42	1820
33	1934	43	1821
34	2	44	1822
35	610	45	1823
36	32	46	1824
37	2380	47	1825
38	2382	48	1826
39	2381	48a	1827
40	2383	48b	1828
41	751	48c	2320
41a	752	49	1823

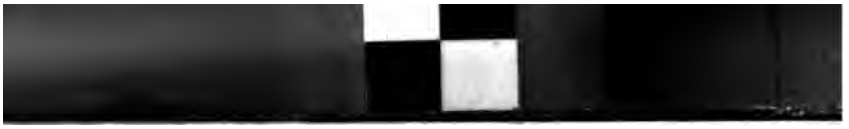


TABLE II.

Penal Code Section.	Penal Law Section.	Penal Code Section.	Penal Law Section.
50	1830	96	1620
51	1831	97	1621
52	1832	98	1623
53	1832	99	1624
54	1833	100	1625
55	1834	101	1626
56	1835	101a	1627
57	1836	102	1628
58	1837	103	1629
59	1320	104	1630
60	1321	105	1632
61	1322	106	1633
62	1323	107	810
63	1324	108	2442
64	1325	109	811
65	1326	110	812
66	1327	111	2441
67	1328	112	813
68	1329	113	2440
69	1330	114	1838
70	1331	115	1839
71	371	116	1840
72	372	117	1841
73	373	117a	1842
74	374	117b	1843
75	376	118	1844
76	1231	119, pt.	1846
77	1792	119, pt.	1845
78	378	120	1847
79	381	121	1848
80	379	122	1849
81	370, 1230	123	1850
	(last par.) 1792	124	1851
82	1692	125	570
83	1873	126	571
84	1693	127	860
85	1694	128	814
86	1695	129	2031
87	1696	130	2032
88	1696	131	2033
89	1697	132	320
90	1697	133	321
91	1698	134	322
92	1690	135	323
93	1690	136	subd. 1, 274
94	2050	137	1852
95	2051	138	1853

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Penal Code Section.	Penal Law Section.	Penal Code Section.	Penal Law Section.
139	1854	178	2303
139, pt.	subd. 3, 274	179	1042
140	1855	180	1043
140, pt.	275	181	1041
141	1856	182	1040
142	2443	183	1044
143	600	183a	1044
144	1237	184	1046
145	1780	185	1047
146	1781	186	1045
147	1080	187	1048
148	273	188	1049
148a	120	189	1050
149	277	190	1050
150	277	191	1050
151	922	192	1051
152	923	193	subd. 2, 1052
153	641	194	1052
154	1857	195	1052
154a	1858	196	1052
155	29	197	1052
156	1782	198	1052
157	1783	199	1052
157a	1784	200	1052
158	1785	201	1052
159	1786	202	1053
160	1691	203	1054
161	1859	204	1055
162	1860	205	1055
163	1861	206	1400
164	1862	207	1402
165	1863	208	1403
166	1864	209	1401
167	1864	210	1404
168	580	211	1250
169	581	212	1251
170	582	213	1252
171	583	214	1253
171a	531	215	1254
171b	1480	216	1255
171c	1481	217	240
172	2300	218	242
173	2301	219	244
174	2302	220	241
175	2304	221	243
176	2305	222	245
177	2306	223	246

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Penal Code Section.	Penal Law Section.
224	2120
225	2121
226	2122
227	2123
228	2124
229	2126
230	2128
231	2125
232	2127
233	2129
234	731
235	732
236	730
237	733
238	734
239	735
240	736
241	737
242	1340
243	1341
244	1342
245	1343
246	1344
247	1345
248	1345
249	1346
250	1347
251	1348
252	1349
253	1350
254	1351
254a	1352
255	Repealed
256	Repealed
257	Repealed
258	Repealed
259	2140
260	2141
261	Repealed
262	Repealed
263	2143
264	2144
265	2145
266	2146
267	2147
268	2148
269	2142
270	2149
271	2150
272	2073
273	2070
274	2071
275	2072
276	2151
277	2152
278	2010
279	2012
280	2011
280a, pt.	100
280a, pt.	101
280a, pt.	103
280b	102
281	532
282	70
282a	2460
282b, pt.	1090
282b, pt.	1091
283	2013
283, pt.	71
283, pt.	533
284	2175
285	2176
286	2177
287	481
287a	480
288	482
289	483
290	484
290a	Repealed
291, pt.	486
291	subd. 7, 487
292	485
292a	488
292b	493
293, pt.	490
293, pt.	491
294	80
295	81
296	492
297	82
298	340
299	341
300	342

TABLE II.

Penal Code Section.	Penal Law Section.	Penal Code Section.	Penal Law Section.
301	343	343	973
302	1110	344	970
303	690	344a	974
304	691	344b	975
305	2210	344c	976
306	2211	345	977
307	2212	346	978
308	2213	347	979
309	2214	348	980
310	2215	349	997
311	2216	350	981
312	2217	351	986
313	2218	352	987
314	2219	353	1590
315	2220	354	1591
316	1140	355	1592
317	1141	355a	390
318	1142	355b	391
319	1143	355c	392
320	1144	355d	393
321	1145	355e	394
322	1146	356	1762
323	1370	357	1761
324	1371	358	1760
325	1372	359	1890
326	1373	359a	1500
327	1374	359b	1500
328	1376	360	1891
329	1377	361	1892
330	1378	362	1893
331	1379	363	924
332	1380	363a ....subd. 1,	140
333	1381	363a ....subd. 2,	143
334	1382	363a ....subd. 3,	142
335	1375	363a ....subd. 4,	141
335a .... Unconstitutional		363b	440
336	971	364 ....subds. 1-7,	2354
337	971	364 ....subd. 8,	421
337a	982	364a	422
337b	983	364b	423
337c	984	364c	424
337d	985	364d	425
338	972	364e	426
339	988	364f	427
340	989	364g	428
341	990	364h	429
342 ....subd. 1,	996	364i	430



TABLE II.

Penal Code Section.	Penal Law Section.	Penal Code Section.	Penal Law Section.
505	405	551	1309
506	406	552	850
507	407	553	851
508	408	554	852
509	884	555	853
510	885	556	854
511	887	557	855
512	887	558	856
513	880	559	551
514	889	560	857
515	889	561	858
516	891	562	928
517	892	563	929
518	890	564	930
519	882	565	931
520	880	566	932
521	881	566a	933
522	883	567	934
523	886	567a	935
524	888	567b	936
525	893	568	937
526	894	569	938
527	895	570	939
528	1290	571	940
529	1293	572	941
530	1294	573	942
531	1296	574	943
532	1298	575	1506
533	1295	576	1507
534	1297	577	1508
535	1299	577a	1190
536	1292	577b	1191
537	1291	577c	1192
538	2480	577d	1193
539	1300	577e	1194
540	1301	577f	1195
541	1302	577g	1196
542	1302	577h	1197
543	1302	577i	1198
544, pt.	442	577j	1199
544, pt.	947	577k	1200
545	1303	578	1201
546	1304	579	1202
547	1305	580	2411
548	1306	581	2412
549	1307	582	2413
550	1308	583	2414



TABLE II.

Penal Code Section.	Penal Law Section.	Penal Code Section.	Penal Law Section.
584	2415	626	1561
585	2416	627	1560
585a	2417	628	361
586	1170	629	360
587	1171	630	362
588	1172	631	363
589	1173	632	364
590	660	633	365
591	662	634	366
592	661	634a	367
593	663	635	1991
594	664	636	1420
595	290	637	1421
596	290	638	1422
597	291	639	1426
598	292	639a	1424
599	293	640	1425
600	294	640a	1160
601	295	640b	1161
602	296	640c	1100
603	297	640d	Repealed
604	298	640e	2039
605	299	641	552
606	300	642	553
607	301	643	121
608	666	644	121
609	302	645	1895
610	664	646	1426
611	665	647	1427
612	669	648	1428
613	668	649	1429
614	667	650	1430
615	Unconstitutional	651	1431
616, pt.	1562	651a	1432
616a	1563	652, pt.	1907
616b	1564	652, pt.	1908
616c	1565	652a	1909
617	Unconstitutional	653	530
618	Unconstitutional	654	1433
619	Unconstitutional	654a	1434
619a	1566	655	185
620	Unconstitutional	656	186
621	1567	657	187
622	1568	658	188
623	1569	659	189
624	1570	660	190
625	1571	661	191



TABLE II.

Penal Code Section.	Penal Law Section.	Penal Code Section.	Penal Law Section.
662	192	691	1021
663	193	692	1022
664	182	693	2461
665	181	694	2190
666	194	695	2190
667	195	696, pt.	2191
668	196	696, pt.	2192
669	180	697	2193
670	278	698	2187
671	279	699	2186
672	1872	700	2185
673	1910	701	2184
674	944	702	2181
674a	2240	703	2182
674b	1484	704	2183
674c	1485	705	2180
674d	1486	706	36
674e	1487	707	510
674f	945	708	511
674g	1911	709	640
674h	948	710	512
675, pt.	43	711	644
675, pt.	720	712	1631
675a	1650	713	2194
676	1933	714	2444
677	1938	715	2445
678	28	716	643
679	33	717	643
680	601	717a	946
681	1939	718	3
682	1936	719	38
683	550	720	23
684	35	721	921
685	260	722	24
686	261	723	37
687	262	724	39
687a	2189	725	40
688	1941	726	1st par. 2501
688a	1942	727	2502
689	1940	728	2500
690	1020	729	441

TABLE III.

TABLE III.

SHOWING SECTIONS OF THE PENAL LAW ADDED, AMENDED OR REPEALED BY LAWS OF 1909, SUBSEQUENT TO ITS ENACTMENT AS A CONSOLIDATED LAW.

§ 71. . . . . Ch. 524
280, added . . . . . Ch. 483
443, added . . . . . Ch. 424
484, subd. 1 . . . . . Ch. 278
611, repealed . . . . . Ch. 524
752 . . . . . Ch. 306
852 . . . . . Ch. 368
856 . . . . . Ch. 368
1092, added . . . . . Ch. 524
1140-a, added . . . . . Ch. 279
1141-a, added . . . . . Ch. 280
1250 . . . . . Ch. 246
1272 . . . . . Ch. 205
1293-a, added . . . . . Ch. 514
1425, subd. 11-a, added . . . . Ch. 525
1460, renumbered . . . . . Ch. 524
1566 . . . . . Ch. 204
1620 . . . . . Ch. 240
1943, renumbered . . . . . Ch. 524
2175, added . . . . . Ch. 524
2176, added . . . . . Ch 524
2177, added . . . . . Ch. 524
2186 . . . . . Ch. 478
2189 . . . . . Ch. 282
2197, repealed . . . . . Ch. 467
2198, added . . . . . Ch. 240
2354 . . . . . Ch. 240
2444 . . . . . Ch. 240
2461, repealed . . . . . Ch. 524
2461, added . . . . . Ch. 524



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§ 3. People v. Rouss (1909), 63 Misc. 135, 145, 118 N. Y. Supp. 433; People v. Star Co. (1909), 135 App. Div. 517, 120 N. Y. Supp. 498.

§ 20. City of New York v. Alhambra Theatre Co. (1910), 136 App. Div. 509, 512, 121 N. Y. Supp. 3.

§ 21. People ex rel. Hunt v. Lane (1909), 132 App. Div. 406, 116 N. Y. Supp. 990; People v. Teal (1909), 133 App. Div. 35, 117 N. Y. Supp. 743.

§ 29. Marra v. New York Central & H. R. R. R. Co. (1910), 139 App. Div. 707, 124 N. Y. Supp. 443.

§ 30. People v. Darrah (1910), 141 App. Div. 408, 126 N. Y. Supp. 522.

§ 31. City of New York v. Alhambra Theatre Co. (1910), 136 App. Div. 509, 512, 121 N. Y. Supp. 3.

§ 38. City of New York v. Alhambra Theatre (1909), 63 Misc. 442, 444, 118 N. Y. Supp. 471; City of New York v. Alhambra Theatre Co. (1910), 136 App. Div. 509, 121 N. Y. Supp. 3.

§ 42. People v. Lumsden (1911), 201 N. Y. 264, 269, revg. 141 App. Div. 158, 125 N. Y. Supp. 1079.

§ 48. People v. Darrah (1910), 141 App. Div. 408, 417, 126 N. Y. Supp. 522.

§ 71. People v. Kathan (1910), 136 App. Div. 303, 307, 120 N. Y. Supp. 1096.

§ 190. People v. Vert (1909), 134 App. Div. 790, 119 N. Y. Supp. 859.

§ 261. People v. Teal (1909), 133 App. Div. 35, 117 N. Y. Supp. 243; People ex rel. Perry v. Gillette (1910), 140 App. Div. 27, 124 N. Y. Supp. 470, revd. 200 N. Y. 275; People v. Pisano (1911), 142 App. Div. 524.

§ 262. People v. Pisano (1911), 142 App. Div. 524.

§ 271. Matter of Rothschild (1910), 140 App. Div. 583, 125 N. Y. Supp. 629.

§ 272. Matter of Rothschild (1910), 140 App. Div. 583, 125 N. Y. Supp. 629.

§ 274. Matter of Shay (1909), 133 App. Div. 547, 118 N. Y. Supp. 146.

§ 277. Matter of Rothschild (1910), 140 App. Div. 583, 125 N. Y. Supp. 629.

§ 278. People v. Friechnan (1910), 139 App. Div. 795, 124 N. Y. Supp. 521.

§ 280. Matter of Application of the Co-operative Law Company (1909), 133 App. Div. 931, 117 N. Y. Supp. 627; Matter of Associated Lawyers' Co. (1909), 134 App. Div. 350, 119 N. Y. Supp. 1177; Kipp v. Siegel-Cooper Co. (1910), 136 App. Div. 918, 120 N. Y. Supp. 988; Matter of Co-operative Law Company (1910), 136 App. Div. 901.

§ 283. People v. Friedman (1910), 139 App. Div. 795, 124 N. Y. Supp. 521.

§ 340. Berry v. Berry (1909), 130 App. Div. 53, 64, 114 N. Y. Supp. 497.

§ 365. Mairs v. Baltimore & Ohio R. R. Co. (1909), 132 App. Div. 652, 117 N. Y. Supp. 370; Canandaigua Nat. Bank v. Southern R. Co. (1909), 64 Misc. 327, 118 N. Y. Supp. 668; Manny v. Wilson (1910), 137 App. Div. 140, 122 N. Y. Supp. 16.

§ 372. People v. Furlong (1910), 140 App. Div. 179, 125 N. Y. Supp. 164.

§ 380. People v. Bock, 69 Misc. 543, 125 N. Y. Supp. 301.

§ 400. Rosenthal v. American Bonding Co. (1911), 143 App. Div. 362.

§ 404. Rosenthal v. American Bonding Co. (1911), 143 App. Div. 362.

§ 439. Kemble & Mills v. Kaighn (1909), 131 App. Div. 63, 115 N. Y. Supp. 809; Becket v. Hepworth Company (1909), 129 App. Div. 914.

§ 440. Jenner v. Shope (1910), 67 Misc. 162; People ex rel. Allen v. Whiting (1910), 68 Misc. 306, 123 N. Y. Supp. 769.

§§ 480-482. People v. Lewis (1909), 132 App. Div. 256, 116 N. Y. Supp. 893.

§ 485. St. Agnes Training School v. County of Erie (1910), 68 Misc. 648, 124 N. Y. Supp. 984.

§ 486. People ex rel. Mengione v. Briggs (1910), 138 App. Div. 386, 122 N. Y. Supp. 715; St. Agnes Training School v. County of Erie (1910), 68 Misc. 648, 124 N. Y. Supp. 984.

§ 528. People v. Gaylord (1910), 139 App. Div. 814, 124 N. Y. Supp. 517.

§ 558. Matter of Osborne (1909), 62 Misc. 575, 582, 117 N. Y. Supp. 169; Witkop & Holmes Co. v. Boyce (1909), 64 Misc. 374, 118 N. Y. Supp. 461; Witkop & Holmes Co. v. Great A. & P. Tea Co. (1910), 69 Misc. 90, 124 N. Y. Supp. 956.

§ 570. Matter of Hart (1909), 131 App. Div. 661, 673, 116 N. Y. Supp. 193.

§ 580. People v. Yannicola (1909), 133 App. Div. 885, 117 N. Y. Supp. 38; People v. American Ice Co. (1909), 135 App. Div. 180, 120 N. Y. Supp. 41; Cohen v. Fisher & Co. (1909), 135 App. Div. 238, 242, 120 N. Y. Supp. 546; Newton Company v. Erickson (1911), 70 Misc. 291, 126 N. Y. Supp. 949; People v. Spiro (1911), 71 Misc. 362.

§ 601. People ex rel. Drake v. Andrews (1909), 134 App. Div. 32, 28, 118 N. Y. Supp. 37.

§ 610. People v. Schleiman (1910), 197 N. Y. 383, 385.

§ 620. People ex rel. Phillips v. Raynes (1910), 136 App. Div. 417, 120 N. Y. Supp. 1053, affd. 198 N. Y. 539.

§ 665. People v. Britton (1909), 134 App. Div. 275, 280, 118 N. Y. Supp. 989.

§ 690. People v. Mayer (1909), 132 App. Div. 646, 117 N. Y. Supp. 520.

§ 720. People ex rel. Gordon v. Superintendent (1910), 65 Misc. 653, 120 N. Y. Supp. 921.

§ 751. People v. Zerillo (1911), 200 N. Y. 443; Matter of Lazarus (1910), 140 App. Div. 406, 125 N. Y. Supp. 414.

§ 770. People ex rel. Hunt v. Lane (1909), 132 App. Div. 406, 116 N. Y. Supp. 990.

§ 810. People v. Welz (1910), 78 Misc. 183, 128 N. Y. Supp. 484.

§ 818. People ex rel. Drake v. Andrews (1909), 134 App. Div. 32, 38, 118 N. Y. Supp. 37.

§ 850. People ex rel. Perry v. Gillette (1911), 200 N. Y. 275, revg. 140 App. Div. 27, 124 N. Y. Supp. 470; People v. Adrogna (1910), 139 App. Div. 595, 124 N. Y. Supp. 68.

§ 851. People ex rel. Perry v. Gillette (1910), 200 N. Y. 275, revg. 140 App. Div. 27, 124 N. Y. Supp. 470; People v. Lee (1911), 70 Misc. 446.

§ 852. People ex rel. Perry v. Gillette (1910), 200 N. Y. 275, revg. 140 App. Div. 27, 124 N. Y. Supp. 470.

§ 854. Colby v. Bingham (1909), 62 Misc. 396, 400, 116 N. Y. Supp. 705.

§ 856. Beall v. Dadirrian (1909), 62 Misc. 125, 115 N. Y. Supp. 196; People ex rel. Perry v. Gillette (1911), 200 N. Y. 275, revg. 140 App. Div. 27, 124 N. Y. Supp. 470

§ 857. People ex rel. Perry v. Gillette (1911), 200 N. Y. 275, revg. 140 App. Div. 27; 124 N. Y. Supp. 470; People v. Wenk (1911), 71 Misc. 368.

§ 880. People v. Rouss (1909), 63 Misc. 135, 143, 118 N. Y. Supp. 433.

§ 884. People v. Biddison (1910), 136 App. Div. 525, 121 N. Y. Supp. 129.

§ 887. Mann v. Press Publishing Co. (1909), 133 App. Div. 29, 117 N. Y. Supp. 779.

§ 889. People ex rel. Hegeman v. Corrigan (1909), 195 N. Y. 1, revg. 126 App. Div. 936; Spilker v. Abrahams (1909), 133 App. Div. 226, 117 N. Y. Supp. 376; People v. Brown (1910), 141 App. Div. 638, 126 N. Y. Supp. 322; People ex rel. Isaacson v. Fallon (1910), 69 Misc. 550, 127 N. Y. Supp. 710.

§ 982. People v. Rouss (1909), 63 Misc. 135, 118 N. Y. Supp. 433; People v. Rouss (1909), 64 Misc. 102, 119 N. Y. Supp. 31.

§ 986. People ex rel. Jones v. Langan (1909), 132 App. Div. 393, 116 N. N. Supp. 718; People ex rel. Lichenstein v. Langan (1909), 196 N. Y. 260, affg. 132 App. Div. 937, 116 N. Y. Supp. 720; People v. Albert (1910), 136 App. Div. 224, 120 N. Y. Supp. 875.

§ 1041. People v. Ferrara (1910), 199 N. Y. 414, 428.

§ 1042. People v. Rochester Ry. & Light Co. (1909), 195 N. Y. 102, affg. 129 App. Div. 843, 114 N. Y. Supp. 755; People ex rel. Patrick v. Frost (1909), 133 App. Div. 179, 117 N. Y. Supp. 524.

§ 1044. People v. Giro (1910), 197 N. Y. 152, 157; People v. Schleiman (1910), 197 N. Y. 383, 385; People v. Gilbert, 199 N. Y. 10, 24; People v. Chiaro (1911), 200 N. Y. 316; People v. Wood (1911), 201 N. Y. 158; People v. Barnes (1911), 202 N. Y. 77; People v. Serimarco (1911), 202 N. Y.

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§ **1050.** People v. Darrah (1910), 141 App. Div. 408, 126 N. Y. Supp. 522; People v. Dillon (1910), 142 App. Div. 64, 126 N. Y. Supp. 674.

§ **1052.** People v. Rochester Ry. & Light Co. (1909), 195 N. Y. 102, affd. 129 App. Div. 843, 114 N. Y. Supp. 755.

§ **1120.** People ex rel. Peabody v. Chanler (1909), 133 App. Div. 159, 117 N. Y. Supp. 322.

§ **1141.** St. Hubert Guild v. Quinn (1909), 64 Misc. 336, 118 N. Y. Supp. 582.

§ **1146.** People v. Jones (1909), 129 App. Div. 772, 113 N. Y. Supp. 1097.

§ **1171.** People v. Schlessel, 196 N. Y. 476, revg. 127 App. Div. 510, 112 N. Y. Supp. 45; People v. Schmulowitz (1909), 133 App. Div. 697, 118 N. Y. Supp. 183.

§ **1192.** People v. Richardson (1909), 64 Misc. 684, 120 N. Y. Supp. 712.

§ **1271.** People ex rel. Williams E. & C. Co. v. Metz (1909), 194 N. Y. 145.

§ **1281.** People v. Brown (1909), 64 Misc. 677, 120 N. Y. Supp. 859.

§ **1290.** People v. Fitzgerald (1909), 195 N. Y. 153, affg. 130 App. Div. 124, 114 N. Y. Supp. 476; People v. Geyer (1909), 132 App. Div. 790, 117 N. Y. Supp. 662; People v. Barry (1909), 132 App. Div. 231, 116 N. Y. Supp. 870; People v. Britton (1909), 134 App. Div. 275, 118 N. Y. Supp. 989; People ex rel. Zotti v. Flynn (1909), 135 App. Div. 276, 120 N. Y. Supp. 511; People v. Kenney (1909), 135 App. Div. 380, 119 N. Y. Supp. 854; People v. Mead (1910), 200 N. Y. 15, affg. 125 App. Div. 7, 109 N. Y. Supp. 163; People v. Meadows (1910), 136 App. Div. 226, 121 N. Y. Supp. 17, affd. 199 N. Y. 1; Greene v. Faukhauser (1910), 137 App. Div. 124, 132, 121 N. Y. Supp. 1004; People v. Ghiggeri (1910), 138 App. Div. 807, 123 N. Y. Supp. 489; Lathrop v. Mathers (1911), 143 App. Div. 376.

§ **1293.** People v. Ghiggeri (1910), 138 App. Div. 807, 123 N. Y. Supp. 489.

§ **1294.** Greene v. Faukhauser (1910), 137 App. Div. 124, 132, 121 N. Y. Supp. 1004.

§ **1298.** People ex rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 114 N. Y. Supp. 933, revd. 195 N. Y. 190; People v. Jones (1911), 142 App. Div. 180, 126 N. Y. Supp. 1085.

§ **1299.** People ex rel. Cosgriff v. Craig (1909), 195 N. Y. 190, revg. 129 App. Div. 851, 114 N. Y. Supp. 833.

§ **1300.** Mills v. Erie R. R. Co. (1909), 63 Misc. 278, 284.

§ **1303.** People v. Barry (1909), 132 App. Div. 231, 241, 116 N. Y. Supp. 870; People v. Geyer (1909), 132 App. Div. 790, 794, 117 N. Y. Supp. 662.

§ **1306.** Greene v. Faukhauser (1910), 137 App. Div. 133.

§ **1307.** People v. Meadows (1910), 136 App. Div. 226, 236, 121 N. Y. Supp. 17, affd. 199 N. Y. 1.

§ **1308.** People v. Rosenthal (1910), 197 N. Y. 394; Greene v. Faukhauser (1910), 137 App. Div. 124, 132, 121 N. Y. Supp. 1004.

§ **1340.** People v. Fornaro (1909), 65 Misc. 457; People v. Star Co. (1909), 135 App. Div. 517, 120 N. Y. Supp. 498.

§ **1342.** People v. Star Co. (1909), 135 App. Div. 517, 120 N. Y. Supp. 498.

§ **1346.** People v. Fornaro (1909), 65 Misc. 457, 119 N. Y. Supp. 746.

§ **1347.** People v. Fornaro (1909), 65 Misc. 457, 119 N. Y. Supp. 746.

§ **1425.** People v. Wright (1909), 133 App. Div. 133, 117 N. Y. Supp. 441.

§ **1427.** People v. Otis (1910), 137 App. Div. 426, 121 N. Y. Supp. 810.

§ **1530.** People v. Transit Development Co. (1909), 131 App. Div. 174, 178, 115 N. Y. Supp. 297; Linzey v. American Ice Co. (1909), 131 App. Div. 333, 115 N. Y. Supp. 767; People v. Eckerson (1909), 133 App. Div. 220, 117 N. Y. Supp. 418; People v. Darrah (1910), 141 App. Div. 408, 417, 126 N. Y. Supp. 522.

§ **1531.** People v. Transit Development Co. (1909), 131 App. Div. 174, 178, 115 N. Y. Supp. 297.

§ **1610.** People ex rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 856, 114 N. Y. Supp. 833, revd. 195 N. Y. 190.

§ **1620.** People ex rel. Hegeman v. Corrigan (1909), 129 App. Div. 62, 72, 113 N. Y. Supp. 504, revd. 195 N. Y. 1; People v. Tillman (1909), 63 Misc. 461, 118 N. Y. Supp. 442; People v. Teal (1909), 133 App. Div. 35, 117 N. Y. Supp. 743; People v. Tillman (1910), 139 App. Div. 572, 124 N. Y. Supp. 44.

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§ **1746.** People v. Santagata (1909), 130 App. Div. 325, 114 N. Y. Supp. 321.

§ **1759.** Weeks Thorn P. Co. v. Glenside W. Mills (1909), 64 Misc. 205, 118 N. Y. Supp. 1027.

§ **1783.** Matter of Osborne (1909), 62 Misc. 575, 580, 117 N. Y. Supp. 169.

§ **1784.** Matter of Osborne (1909), 62 Misc. 575, 581, 117 N. Y. Supp. 169.

§ **1787.** Richards v. Richards (1909), 64 Misc. 285, 119 N. Y. Supp. 81.

§ **1857.** Matter of Osborne (1909), 62 Misc. 575, 581, 117 N. Y. Supp. 169.

§ **1867.** People v. Randolph (1910), 136 App. Div. 662.

§ **1904.** Linzey v. American Ice Co. (1909), 131 App. Div. 333, 115 N. Y. Supp. 767.

§ **1906.** Ship v. Fridenberg (1909), 132 App. Div. 782, 117 N. Y. Supp. 599.

§ **1935.** People ex rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 114 N. Y. Supp. 833, revd. 195 N. Y. 190.

§ **1937.** People ex rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 114 N. Y. Supp. 833, revd. 195 N. Y. 190.

§ **1939.** People ex rel. Drake v. Andrews (1909), 134 App. Div. 32, 38, 118 N. Y. Supp. 37.

§ **1941.** People ex rel. Cosgriff v. Craig (1909), 195 N. Y. 190, revg. 129 App. Div. 851, 114 N. Y. Supp. 833.

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§ 1983. Wehn v. Interborough Rapid Transit Co. (1909), 132 App. Div. 841, 117 N. Y. Supp. 731.

§ 1990. East v. Brooklyn H. R. R. Co. (1909), 195 N. Y. 409, revg. 126 App. Div. 936.

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§ 2124. People v. Madas (1911), 201 N. Y. 349, 352; People v. Roof (1910), 138 App. Div. 634.

§ 2140. Fox Amusement Co. v. McClellan (1909), 62 Misc. 100, 104, 114 N. Y. Supp. 594; Roth v. Robertson (1909), 64 Misc. 343, 118 N. Y. Supp. 351.

§ 2142. Fox Amusement Co. v. McClellan (1909), 62 Misc. 100, 105, 114 N. Y. Supp. 594; Roth v. Robertson (1909), 64 Misc. 343, 118 N. Y. Supp. 354; Southern Tier Baseball Assn. v. Day (1910), 69 Misc. 53, 125 N. Y. Supp. 733.

§ 2144. Fox Amusement Co. v. McClellan (1909), 62 Misc. 100, 105, 114 N. Y. Supp. 594.

§ 2145. Fox Amusement Co. v. McClellan (1909), 62 Misc. 100, 105, 114 N. Y. Supp. 594; Roth v. Robertson (1909), 64 Misc. 343, 118 N. Y. Supp. 351; Southern Tier Baseball Assn. v. Day (1910), 69 Misc. 53, 125 N. Y. Supp. 733.

§ 2147. Fox Amusement Co. v. McClellan (1909), 62 Misc. 100, 105, 114 N. Y. Supp. 594; Silverberg Brothers v. Douglass (1909), 62 Misc. 340, 114 N. Y. Supp. 824.

§ 2152. Fox Amusement Co. v. McClellan (1909), 62 Misc. 100, 104, 114 N. Y. Supp. 594; City of New York v. Alhambra Theater (1909), 63 Misc. 442, 118 N. Y. Supp. 471; City of New York v. Alhambra Theater Co. (1910), 136 App. Div. 510.

§§ 2175-2177. People ex rel. Scharff v. Frost (1909), 135 App. Div. 473, 120 N. Y. Supp. 491, affd. 198 N. Y. 110.

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§ 2186. People ex rel. Bedell v. Foster (1909), 132 App. Div. 116, 116 N. Y. Supp. 530.

§ 2189. People ex rel. Bedell v. Foster (1909), 132 App. Div. 116, 116 N. Y. Supp. 530.

§§ 2210-2220. Danahy v. Kellogg (1910), 70 Misc. 25, 126 N. Y. Supp. 444.

§ 2213. Darcy v. Presbyterian Hospital (1911), 202 N. Y. 259; Hassard v. Lehane (1911), 143 App. Div. 424; Newman v. Stewart (1911), 71 Misc. 1.

§ 2354. People v. Luhrs (1909), 195 N. Y. 377, affg. 127 App. Div. 634, 111 N. Y. Supp. 749.

§ 2440. People v. Kathan (1910), 136 App. Div. 303, 120 N. Y. Supp. 1096.

§ 2460. People v. Moore (1911), 142 App. Div. 402.

§ 2500. City of New York v. Alhambra Theater Co. (1910), 136 App. Div. 509, 512, 121 N. Y. Supp. 3.

§ 2501. People ex rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 114 N. Y. Supp. 833, revd. 195 N. Y. 190.



PART 1

PENAL LAW



PENAL LAW

OF THE

STATE OF NEW YORK.

LAWS 1909, CHAPTER 88.

WITH ALL AMENDMENTS PASSED BY THE LEGISLATURE TO AND INCLUDING JULY 21, 1911.

AN ACT providing for the Punishment of Crime, constituting Chapter Forty of the Consolidated Laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Chapter 40 of the Consolidated Laws.

PENAL LAW.

ARTICLE 1. Short title and definitions (§§ 1-3).
2. General provisions (§§ 20-43).
4. Abduction (§§ 70, 71).
6. Abortion (§§ 80-82).
8. Adultery (§§ 100-103).
10. Advertising (§§ 120, 121).
12. Agents (§§ 140-143).
14. Anarchy (§§ 160-166).
16. Animals (§§ 180-196).
18. Arson (§§ 220-227).
20. Assault (§§ 240-246).
22. Attempt to commit crime (§§ 260-262).
24. Attorneys (§§ 270-280).
26. Banking (§§ 290-302).
28. Barratry (§§ 320-323).
30. Bigamy (§§ 340-343).
32. Bills of lading, receipts and vouchers (§§ 360-367).
34. Bribery and corruption (§§ 370-381).
36. Bucket shops (§§ 390-394).
38. Burglary (§§ 400-408).
40. Business and trade (§§ 420-443).

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ARTICLE 42. Canals (§§ 460-465).
44. Children (§§ 480-493).
46. Civil rights (§§ 510-516).
48. Coercion (§§ 530-533).
50. Communication (§§ 550-553).
52. Compounding crime (§§ 570, 571).
54. Conspiracy (§§ 580-583).
56. Contempt of court (§§ 600-602).
58. Conviction (§ 610.
60. Convict made goods (§ 620).
62. Convicts (§§ 640-644).
64. Corporations (§§ 660-669).
66. Crime against nature (§§ 690, 691).
68. Disguises (§§ 710-713).
70. Disorderly conduct (§§ 720, 721).
72. Dueling (§§ 730-737).
74. Elective franchise (§§ 750-782).
76. Evidence (§§ 810-817).
78. Exhibitions (§§ 830-834).
80. Extortion and threats (§§ 850-860).
82. Ferries (§§ 870, 871).
84. Forgery (§§ 880-895).
86. Frauds and cheats (§§ 920-949).
88. Gambling (§§ 970-997).
90. Habitual criminals (§§ 1020-1022).
92. Hazing (§ 1030).
94. Homicide (§§ 1040-1055).
96. Horse racing (§§ 1080-1082).
98. Husband and wife (§§ 1090, 1092).
100. Ice (§ 1100).
102. Incest (§ 1110).
104. Incompetent persons (§§ 1120-1122).
106. Indecency (§§ 1140-1147).
108. Indians (§§ 1160, 1161).
110. Insolvency (§§ 1170-1173).
112. Insurance (§§ 1190-1202).
114. Intoxication (§§ 1220, 1221).
116. Juries and jurors (§§ 1230-1237).
118. Kidnapping (§§ 1250-1255).
120. Labor (§§ 1270-1278).
122. Larceny (§§ 1290-1310).
124. Legislature (§§ 1320-1331).
126. Libel (§§ 1340-1352).
128. Logs (§ 1360).
130. Lotteries (§§ 1370-1386).
132. Maiming (§§ 1400-1404).
134. Malicious mischief (§§ 1420-1435).
136. Marriages (§ 1450).

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140. Meetings (§§ 1470-1472).
142. Military (§§ 1480-1487).
144. Navigation (§§ 1500-1509).
146. Negotiable instruments (§§ 1520, 1521).
148. Nuisances (§§ 1530-1533).
150. Oysters (§§ 1550, 1551).
152. Passage tickets (§§ 1560-1571).
154. Pawnbrokers (§§ 1590-1592).
156. Peddlers (§ 1610).
158. Perjury and subornation of perjury (§§ 1620-1634).
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162. Prisoners (§§ 1690-1698).
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166. Public health (§§ 1740-1763).
168. Public justice (§§ 1780-1792).
170. Public offices and officers (§§ 1820-1876).
172. Public safety (§§ 1890-1913).
174. Punishment (§§ 1930-1942).
176. Quarantine (§§ 1960-1964).
178. Railroads (§§ 1980-1991).
180. Rape (§§ 2010-2013).
182. Real property (§§ 2030-2039).
184. Records and documents (§§ 2050, 2051).
186. Religion (§§ 2070-2073).
188. Riots and unlawful assemblies (§§ 2090-2097).
190. Robbery (§§ 2120-2129).
192. Sabbath (§§ 2140-2153).
194. Salt works (§ 2170).
195. Seduction (§§ 2175-2177).
196. Sentence (§§ 2180-2198).
198. Sepulture (§§ 2210-2220).
200. Societies and orders (§ 2240).
202. Suicide (§§ 2300-2306).
204. Taxes (§§ 2320, 2321).
206. Trade-marks (§§ 2350-2357).
208. Trading stamps (§§ 2360, 2361).
210. Tramps (§§ 2370-2372).
212. Treason (§§ 2380-2383).
214. Usury (§ 2400).
216. Weights and measures (§§ 2410-2417).
218. Witness (§§ 2440-2445).
220. Women (§§ 2460, 2461).
222. Wrecks (§§ 2480-2482).
224. Repeal of provisions of penal law must be explicit; laws repealed; time of taking effect (§§ 2500-2502).

ARTICLE 1.

SHORT TITLE AND DEFINITIONS.

SECTION 1. Short title.
2. Definitions.
3. Construction of terms.

§ 1. Short title.

This chapter shall be known as "Penal Law."

Derivation: Penal Code, § 1. See § 20, *post*.

§ 2. Definitions.

Crime. A "crime" is an act or omission forbidden by law, and punishable upon conviction by:

1. Death; or,
2. Imprisonment; or,
3. Fine; or,
4. Removal from office; or,
5. Disqualification to hold any office of trust, honor or profit under the state; or,
6. Other penal discipline.

Division of crime. A crime is:

1. A felony; or,
2. A misdemeanor.

Felony. A "felony" is a crime which is or may be punishable by:

1. Death; or,
2. Imprisonment in a state prison.

Misdemeanor. Any other crime is a "misdemeanor."

Principal. A person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a "principal."

Accessory. A person who, after the commission of a felony, harbors, conceals, or aids the offender, with intent that he may avoid or escape from arrest, trial, conviction, or punishment, having knowledge or reasonable ground to believe that such offender is liable to arrest, has been arrested, is indicted or convicted. or has committed a felony, is an "accessory" to the felony.

Attempt to commit a crime. An act, done with intent to commit a crime, and tending but failing to effect its commission, is "an attempt to commit that crime."

Derivation: Penal Code, §§ 3-6, 29, 30, 34.

Crime.—McCord v. People (1871), 46 N. Y. 470, 473; People v. Adams (1879), 16 Hun, 549; People ex rel. Hislop v. Cowles (1879), 16 Hun, 577, aff'd 77 N. Y. 331; People v. Burton (1883), 1 N. Y. Cr. 297, 16 W. Dig. 195; People v. Hale (1883), 1 N. Y. Cr. 533; People v. Parr (1886), 42 Hun, 313; People ex rel. Kopp v. French (1886), 102 N. Y. 583; s. c., 4 N. Y. Cr. 447, aff'g id. 300; s. c., 39 Hun, 507; Darrow v. Family Fund Society (1886), 42 Hun, 247, 116 N. Y. 537, 542; People v. West (1887), 106 N. Y. 293, 296, aff'g 44 Hun, 162; People v. Barber (1888), 48 Hun, 198; People v. Gillson (1888), 109 N. Y. 389, 406; Lawton v. Steele (1890), 119 N. Y. 233, 16 Am. St. Rep. 813, aff'g 5 N. Y. Supp. 953; People v. Most (1891), 128 N. Y. 108, 8 N. Y. Cr. 278; People v. Meakim (1892), 133 N. Y. 214, 8 N. Y. Cr. 404, aff'g 61 Hun, 327, 8 N. Y. Cr. 308; People v. Phyfe (1892), 136 N. Y. 554, rev'g 48 N. Y. S. R. 350; Hewitt v. Newburger (1894), 141 N. Y. 538, rev'g 66 Hun, 230; People v. Stone (1895), 85 Hun, 130; People v. Girard (1895), 145 N. Y. 105, aff'g 73 Hun, 457; People ex rel. Shortell v. Markell (1897), 20 Misc. 149, 12 N. Y. Cr. 312; People ex rel. Stevenson Co. v. Lyman (1902), 67 App. Div. 446, 73 N. Y. Supp. 987; Mairs v. Baltimore, etc., R. Co. (1902), 73 App. Div. 273, 76 N. Y. Supp. 838; People ex rel. Allen v. Hagan (1902), 170 N. Y. 46, 16 N. Y. Cr. 313; People v. Martin (1902), 175 N. Y. 315, aff'g 77 App. Div. 396, 79 N. Y. Supp. 340, which reversed 38 Misc. 67, 76 N. Y. Supp. 953; People v. Abeel (1904), 45 Misc. 86, 92 N. Y. Supp. 699; see also People v. Smith, 5 Cow. 258; People v. Hays, 1 Hill, 551; People v. Reed, 47 Barb. 235; Hamilton v. People, 57 Barb. 625; Morris v. People, 3 Denio, 381; Mayor v. Eisler, 2 Civ. Proc. 125; Mogul Steamship Co. v. McGregor, 23 Q. B. Div. 606; Com. v. Weiss, 139 Pa. St. 247, 23 Am. St. Rep. 182; Matter of Wilson, 114 U. S. 417; United States v. Wynn, 9 Fed. 886; 2 Abb. Nat. Dig. 222.

Division of Crimes.—Mairs v. Baltimore, etc., R. Co. (1902), 73 App. Div. 273, 76 N. Y. Supp. 838; People ex rel. Smith v. Van De Carr (1903), 86 App. Div. 10, 83 N. Y. Supp. 245, 17 N. Y. Cr. 455.

Felony.—People v. Park (1869), 41 N. Y. 21, aff'g 1 Lans. 263; People v. Cole (1883), 2 N. Y. Cr. 108; Bork v. People (1883), 91 N. Y. 5, aff'g 26 Hun, 670, 1 N. Y. Cr. 368; People v. Lyon (1885), 99 N. Y. 210, 3 N. Y. Cr. 166, rev'g 33 Hun, 623, 1 N. Y. Cr. 400, 2 N. Y. Cr. 484; People v. Richards (1887), 5 N. Y. Cr. 355, 44 Hun, 283; People v. Johnson (1887), 46 Hun, 670; People v. Johnson (1888), 110 N. Y. 141; Benedict v. Williams (1888), 48 Hun, 123; People v. Hughes (1893), 137 N. Y. 30, aff'g 46 N. Y. S. R. 413; People v. Carter (1895), 88 Hun, 304, 11 N. Y. Cr. 25; People v. Cornyn (1901), 36 Misc. 136, 72 N. Y. Supp. 1088, 16 N. Y. Cr. 102; Mairs v. Balt. & Ohio R. R. Co. (1902), 73 App. Div. 273, 76 N. Y. Supp. 838; People ex rel. Smith v. Van De Carr (1903), 86 App. Div. 10, 83 N. Y. Supp. 205, 17 N. Y. Cr. 455; People v. Stacy (1907), 119 App. Div. 747, 104 N. Y. Supp. 615, 21 N. Y. Cr. 215; People ex rel. Cosgriff v. Craig (1908), 60 Misc. 531; see also People v. Borges, 6 Abb. Pr. 132; People v. Van Steenburgh, 1 Park. 39; Crenshaw v. People, 17 Am. Dec. 791-795 (note).

Misdemeanor.—People v. Finn (1881), 26 Hun, 58, 60; Peopde v. Faber (1883), 92 N. Y. 149, 44 Am. Rep. 357, rev'g 29 Hun, 320; People y. Lyon (1883), 99 N. Y. 219, 1 N. Y. Cr. 400; People v. Cooper (1884), 3 N. Y. Cr. 117; People v. Sweeney (1886), 41 Hun, 340; People v. Richards (1887), 5 N. Y. Cr. 355, 44 Hun, 278; People v. Upson (1894), 79 Hun, 87; People v. Carter (1895), 88 Hun, 305, 11 N. Y. Cr. 25; People v. Markell (1897), 20 Misc. 149; People ex rel. Frank v. The Keeper, etc. (1902), 38 Misc. 238, 77 N. Y. Supp. 145, aff'd 80 App. Div. 448, 80 N. Y. Supp. 872; Mairs v. Balt. & Ohio R. R. Co. (1902), 73 App. Div. 273, 76 N. Y. Supp. 838; People ex rel. Smith v. Van De Carr (1903), 86 App. Div. 10, 83 N. Y. Supp. 245, 17 N. Y. Cr. 455; People v. Stacy (1907), 119 App. Div. 748, 104 N. Y. Supp. 615, 21 N. Y. Cr. 215; see also People v. Hovey, 5 Barb. 117; People v. Bogart, 3 Abb. Pr. 193.

Principal.—McCarney v. People (1880), 83 N. Y. 413; People v. Ryland (1884), 97 N. Y. 126; People v. Bassford (1885), 3 N. Y. Cr. 219, 223; People v. Fitzgerald (1887), 105 N. Y. 146, 5 N. Y. Cr. 335, 6 N. Y. St. 32, rev'g 43 Hun, 36, 6 N. Y. St. 599; People v. Sharp (1887), 107 N. Y. 427, 12 N. Y. State Rep. 217, rev'g 45 Hun, 460, 10 N. Y. State Rep. 522; People v. Batterson (1888), 50 Hun, 44, 5 N. Y. Cr. 176; People v. Brien (1889), 53 Hun, 496, 25 N. Y. St. 239, 7 N. Y. Cr. 166; Leonard v. Poole (1889), 114 N. Y. 371, aff'g 55 N. Y. Super. 213; People v. Bliven (1889), 112 N. Y. 82, 20 N. Y. St. 487; People v. Kief (1890), 58 Hun, 337, 34 N. Y. St. 533, aff'd 126 N. Y. 663, 37 N. Y. St. 479; People v. Phelps (1891), 61 Hun, 116, 39 N. Y. St. 599; People v. O'Connell (1891), 60 Hun, 109, 38 N. Y. St. 109; People v. Cotto (1892), 131 N. Y. 579; People v. Bosevorth (1892), 64 Hun, 72; People v. McKane (1894), 143 N. Y. 455, aff'g 80 Hun, 323; People v. Sebring (1895), 14 Misc. 31; Anderson v. Schlesinger (1896), 16 Miss. 535; Shad v. Security Mut. L. Assn. (1896), 11 App. Div. 487; People v. McLaughlin (1896), 150 N. Y. 365; People v. Kelly (1896), 11 App. Div. 495, 153 N. Y. 651; People v. Peckens (1897), 153 N. Y. 576, 12 N. Y. Cr. 433; People v. Knatt (1898), 156 N. Y. 305; People v. Stock (1898), 26 App. Div. 564; People v. Fitzgerald (1898), 156 N. Y. 257, 13 N. Y. Cr. 36, rev'g 20 App. Div. 139; People v. Rivello (1899), 39 App. Div. 454, 14 N. Y. Cr. 49; Marden v. Dorthy (1899), 160 N. Y. 56, aff'g 12 App. Div. 188; People v. Fielding 1899), 36 App. Div. 401; People v. Dilcher (1902), 38 Misc. 91, 77 N. Y. Supp. 108, 16 N. Y. Cr. 548; People v. Martin (1902), 77 App. Div. 396, 79 N. Y. Supp. 340, 17 N. Y. Cr. 150; People v. Mills (1903), 41 Misc. 195, 83 N. Y. Supp. 94; People v. Kent (1903), 41 Misc. 193, 83 N. Y. Supp. 948, 17 N. Y. Cr. 461; People v. Lagroppo (1904), 90 App. Div. 229, 86 N. Y. Supp. 116, 18 N. Y. Cr. 87; People v. Mills (1904), 178 N. Y. 274, 18 N. Y. Cr. 285, aff'g 91 App. Div. 331, 86 N. Y. Supp. 529; People v. Putnam (1904), 90 App. Div. 127, 85 N. Y. Supp. 1056, 18 N. Y. Cr. 105; People v. Corbalis (1904), 178 N. Y. 523; People v. Canepi (1904), 93 App. Div. 380, 87 N. Y. Supp. 773, 18 N. Y. Cr. 344; People v. Schiavi (1904), 96 App. Div. 483, 89 N. Y. Supp. 564, 18 N. Y. Cr. 469; People v. Du Veau (1905), 105 App. Div. 381, 94 N. Y. Supp. 225, 19 N. Y. Cr. 268; People v. Patrick (1905), 182 N. Y. 141; People ex rel. Stearns v. Marr (1905), 181 N. Y. 468; People v. Summerfield (1905), 48 Misc. 242, 96 N. Y. Supp. 502, 19 N. Y. Cr. 508; People v. Kellogg (1905), 105 App. Div. 505, 94 N. Y. Supp. 617; People ex rel. Perkins v.

Moss (1907), 187 N. Y. 420, 50 Misc. 198, 20 N. Y. Cr. 579; People v. Jacques (1907), 54 Misc. 8, 105 N. Y. Supp. 387; People v. Acritelli (1908), 57 Misc. 574; People v. Taylor (1908), 192 N. Y. 402; see also People v. Wyley, 48 N. Y. St. 500, 20 N. Y. Supp. 446; People v. McElroy, 37 N. Y. St. 650; People v. Hall, 57 How. Pr. 342.

Accessory.—People v. Dunn (1889), 53 Hun, 381, 25 N. Y. St. 460, 7 N. Y. Cr. 173, 6 N. Y. Supp. 805; People v. Pedro (1897), 19 Misc. 303, 12 N. Y. Cr. 499; Dever v. Hagerty (1899), 43 App. Div. 354, rev'd 169 N. Y. 481.

Attempt to Commit Crime.—Darrow v. Family Fund Society (1886), 42 Hun, 245, aff'd 116 N. Y. 542; People v. Johnson (1887), 46 Hun, 667, 7 N. Y. Cr. 393, aff'd 110 N. Y. 141; People v. Moran (1889), 123 N. Y. 254, 8 N. Y. Cr. 106, 33 N. Y. St. 398, rev'g 54 Hun, 279, 27 N. Y. St. 20, 7 N. Y. Cr. 336; People v. Gardner (1894), 144 N. Y. 124, 125, mod'f'g 73 Hun, 66; People v. Spolasco (1900), 33 Misc. 22, 15 N. Y. Cr. 184, 101 N. Y. St. 114; People v. Kane (1900), 161 N. Y. 380, 14 N. Y. Cr. 303; People v. Mosier (1902), 73 App. Div. 9, 76 N. Y. Supp. 65, 16 N. Y. Cr. 545; People v. Mills (1904), 178 N. Y. 284, 18 N. Y. Cr. 292; People v. Du Veau (1905), 105 App. Div. 381, 94 N. Y. Supp. 225, 17 N. Y. Cr. 268; People v. Conrad (1905), 182 N. Y. 529, 19 N. Y. Cr. 263, aff'g 102 App. Div. 566, 92 N. Y. Supp. 606; People v. Jaffe (1906), 185 N. Y. 503, 19 N. Y. Cr. 293, rev'g 112 App. Div. 519, 98 N. Y. Supp. 486; see also McDermott v. People, 5 Park, 102; Mulligan v. People, 5 Park, 105; United States v. Stephens, 8 Sawy. 116; People v. Stiles, 75 Cal. 570; State v. Gray, 19 Nev. 212; Cox v. People, 82 Ill. 191; Stabler v. Com., 95 Penn. St. 318, 40 Am. Rep. 653, 17 Cent. L. J. 404, 22 Alb. L. J. 448; Lamb v. State, 67 Md. 524; People v. Lawton, 56 Barb. 126; Reg. v. Brown, 24 Q. B. Div. 357; Com. v. McDonald, 5 Cush. 365; People v. Jones, 46 Mich. 441; Rogers v. Com., 5 S. & R. 462; State v. Wilson, 30 Conn. 500; Kunkle v. State, 32 Ind. 520; Hamilton v. State, 36 Ind. 280; State v. Beal, 37 Ohio St. 108, 41 Am. Rep. 490; People v. Bush, 4 Hill, 134; Reg. v. Banks, 12 Cox Cr. Cas. 393, 5 Eng. Rep. 471; Lamb v. State, 67 Md. 524; Whitesides v. State, 11 Lea (Tenn.), 474.

§ 3. Construction of terms.

In construing this chapter or an indictment or other pleading in a case provided for by this chapter, the following rules must be observed, except when a contrary intent is plainly declared in the provision to be construed, or plainly apparent from the context thereof:

1. Each of the terms "neglect," "negligence," "negligent," and "negligently," imports a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns;

2. Each of the terms "corrupt" and "corruptly" imports a wrongful desire to acquire, or cause some pecuniary or other advantage to or by the person guilty of the act or omission referred to or some other person;

3. Each of the terms "malice" and "maliciously" imports an evil intent or wish or design to vex, annoy or injure another person, or to maltreat or injure an animal;

4. The term "knowingly" imports a knowledge that the facts exist which constitute the act or omission a crime, and does not require knowledge of the unlawfulness of the act or omission;

5. Where an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person;

6. The term "vessel" includes ships, steamers, canal boats, and every boat or structure adapted to navigation or movement from place to place by water, either upon the ocean, lakes, rivers, or artificial water ways;

7. The term "signature" includes any memorandum, mark or sign, written with intent to authenticate any instrument or writing, or the subscription of any person thereto;

8. The term "writing" includes both printing and writing;

9. The terms "reputed house of prostitution or assignation," "house of prostitution," "house of ill-fame or assignation," "disorderly house," include all premises which by common fame or report are used for purposes of prostitution or assignation.

Derivation: Penal Code, § 718, as amended L. 1882, ch. 384; subd. 9 added as subd. 16, L. 1886, ch. 31, § 7.

Rosenplaenter v. Roessle (1873), 54 N. Y. 262, 268; People v. Buddensieck (1886), 103 N. Y. 487, 1 N. Y. St. Rep. 450, 4 N. Y. Cr. Rep. 265; Moebus v. Hermann (1888), 108 N. Y. 349, 13 N. Y. St. 648, aff'g 38 Hun, 370; Sherman v. Transportation Co., 62 Barb. 150; New York Guaranty Co. v. Gleason, 53 How. Pr. 125; Anderson v. How (1889), 116 N. Y. 341, 26 N. Y. State Rep. 790; People v. Stark (1891), 59 Hun, 51, 57, 35 N. Y. St. Rep. 154, 12 N. Y. Supp. 691; People v. Camp (1893), 66 Hun, 531, 51 N. Y. St. Rep. 34, 20 N. Y. Supp. 744; People v. Luhrs (1908), 127 App. Div. 636; People v. Acritelli (1908), 57 Misc. 574, 110 N. Y. Supp. 430; People v. D'Argencour (1884), 95 N. Y. 624, 2 N. Y. Cr. 267, aff'g 32 Hun, 178; People v. Martin (1885), 36 Hun, 462, 3 N. Y. Cr. 122, rev'g 2 N. Y. Cr. 52; People v. Hegeman (1907), 57 Misc. 295, 107 N. Y. Supp. 261; Walsh v. N. Y. Dock Co. (1879), 77 N. Y. 448, aff'g 8 Daly, 387; Tinken v. Stillwagon, 1 City Ct. Rep. 390; Crawford v. Collins, 45 Barb. 269, 30 How. Pr. 398; People v. Herlihy (1901), 66 App. Div. 534, 73 N. Y. Supp. 236, rev'g 35 Misc. 719, 72 N. Y. Supp. 389; People v. Hart (1906), 115 App. Div. 896, 101 N. Y. Supp. 1137; People v. Hatter, 22 N. Y. Supp. 691.

ARTICLE 2.

GENERAL PROVISIONS.

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§ 20. Objects of penal law.

This chapter specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; defines the nature of the various crimes; and prescribes the kind and measure of punshment to be inflicted for each.

Derivation: Penal Code, § 7.

People v. McTameney (1883), 30 Hun, 505, 13 Abb. N. C. 56, 66 How. Pr. 75, 1 N. Y. Cr. 437; People v. Rugg (1885), 98 N. Y. 537, 551; People v. Jaehne (1886), 103 N. Y. 182, 193, 4 N. Y. Cr. 479; People v. Palmer (1888), 109 N. Y. 110; People v. Richards (1888), 108 N. Y. 137, 144, rev'g 44 Hun, 278; Fitzgerald v. Quann (1888), 109 N. Y. 441, 445; People v. Stevens (1888), 109 N. Y. 159, 162; People v. Fanshawe (1893), 137 N. Y. 68, 74, aff'g 65 Hun, 77, 19 N. Y. Supp. 865; Matter of Hallenbeck, 65 How. Pr. 401, 1 N. Y. Cr. 437 note.

§ **21. General rules of construction of this chapter.**

The rule that a penal statute is to be strictly construed does not apply to this chapter or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law.

Derivation: Penal Code, § 11.

Matter of Hallenbeck (1883), 1 N. Y. Cr. 437, 65 How. 401; People v. McTameney (1883), 30 Hun, 505, 13 Abb. N. C. 56, 66 How. 70, 1 N. Y. Cr. 437; Cowley v. People (1880), 83 N. Y. 464, 468; People v. Whedon (1884), 2 N. Y. Cr. 318; People v. Bauer (1885), 37 Hun, 407; Thomas v. Mut. Protective Union (1888), 49 Hun, 171, 2 N. Y. Supp. 195; People v. Phelps (1892), 133 N. Y. 269, 44 N. Y. St. 911, aff'g 61 Hun, 115, 15 N. Y. Supp. 440; Beebe v. Supervisors (1892), 64 Hun, 377, 19 N. Y. Supp. 629; Grannan v. Westchester Racing Assn. (1897), 16 App. Div. 8, 44 N. Y. Supp. 790; People v. Nelson (1897), 153 N. Y. 90, 12 N. Y. Cr. 368, rev'g 91 Hun, 635, 36 N. Y. Supp. 1130; People v. Fielding (1899), 36 App. Div. 401, 55 N. Y. Supp. 530; People v. Martin (1903), 175 N. Y. 315, aff'g 77 App. Div. 396, 79 N. Y. Supp. 340, 17 N. Y. Cr. 150; People v. Abeel (1905), 182 N. Y. 415, 100 App. Div. 516, 91 N. Y. Supp. 1107, 45 Misc. 89, 91 N. Y. Supp. 699; People v. Huggins (1906), 110 App. Div. 613, 615, 97 N. Y. Supp. 187, 20 N. Y. Cr. 257; People ex rel. Collins v. McLaughlin (1908), 60 Misc. 308; see also People v. West, 49 Cal. 610; United States v. Sharp, Pet. C. C. 118; People v. Tisdale, 57 Cal. 104; People v. Soto, 49 Cal. 68; Lamb v. State, 67 Md. 524, 10 Crim. L. Mag. 95; Matter of Gutierrez, 45 Cal. 431.

§ **22. Effect of chapter.**

No act or omission begun after the beginning of the day on which this chapter takes effect as a law, shall be deemed criminal or punishable, except as prescribed or authorized by this chapter, or by some statute of this state not repealed by it. Any act or omission begun prior to that day may be inquired of, prosecuted and punished in the same manner as if this chapter had not been passed.

Derivation: Penal Code, § 2.

Hartung v. People (1860), 22 N. Y. 95; Shepherd v. People (1862), 25 N. Y. 406, 24 How. 388; Ratsky v. People (1864), 29 N. Y. 124, 28 How. 112; Stokes v. People (1873), 53 N. Y. 164; People ex rel. Pellis v. Supervisors (1875), 65 N. Y. 300, rev'g 63 Barb. 83; People v. Lord (1877), 12 Hun, 282; People v. Bernardo (1883), 1 N. Y. Cr. Rep. 245; People v. Hallenbeck (1883), 65 How. Pr. 401, 1 N. Y. Cr. 437 note; People v. Sadler (1884), 97 N. Y. 146, 3 N. Y. Cr. 474; People v. Raymond (1884), 32 Hun, 123; People v. Jaehne (1886), 103 N. Y. 182, 4 N. Y. Cr. 193, aff'd 128 U. S. 189, 6 N. Y. Cr. 237; People v. Beckwith (1888), 108 N. Y. 67, 7 N. Y. Cr. 146; People v. O'Neil (1888), 109 N. Y. 251; People v. O'Brien (1888), 111 N. Y.

1, 7 Am. St. Rep. 684, rev'g 45 Hun, 519; People v. Turner (1889), 117 N. Y. 233, 15 Am. St. Rep. 498; People v. Moran (1889), 54 Hun, 279, 7 N. Y. Supp. 582, 7 N. Y. Cr. 329; Bullock v. Town of Durham (1892), 64 Hun, 380, 19 N. Y. Supp. 635; People v. Hayes (1893), 140 N. Y. 493, 23 L. R. A. 830, aff'g 70 Hun, 111, 24 N. Y. Supp. 194; People v. England (1895), 91 Hun, 152, 36 N. Y. Supp. 534; People v. Hawker (1897), 12 N. Y. Cr. 122, rev'd 12 N. Y. Cr. 257, 152 N. Y. 234, aff'd 170 U. S. 189, rev'g 14 App. Div. 188, 43 N. Y. Supp. 516; see also Cummings v. State, 4 Wall. 277; State v. Corson, 59 Me. 137; Com. v. Mott, 21 Pick. 474; Com. v. Dorsey, 103 Mass. 412; Clarke v. State, 23 Miss. 261; Calder v. Bull, 3 Dall. 388, 390; Boston v. Cummings, 16 Ga. 102; Matter of Garland, 4 Wall. 333, 32 How. Pr. 241; Garvey's Case, 6 Colo. 384, 49 Am. Rep. 358; Gut v. State, 9 Wall. 35; Hair v. State, 16 Nebr. 601; Hart v. State, 40 Ala. 21; Herber v. State, 7 Tex. 70; Hopt v. Territory, 110 U. S. 574; Matter of Hunt, 13 S. W. 145; Keene v. State, 3 Chand. 109, 3 Penn. 99; Knuckler v. People, 5 Park. 212; Kring v. State, 107 U. S. 221; Lasure v. State, 19 Ohio St. 43; State v. Manning, 14 Tex. 402; Marion v. State, 20 Nebr. 233, 57 Am. Rep. 825; McInturf v. State, 20 Tex. App. 335; Maul v. State, 25 Tex. 166; Matter of Medley, 134 U. S. 160; State v. Moore, 42 N. J. L. 203, 39 Am. Rep. 558; People v. Mortimer, 46 Cal. 114; State v. Ryan, 13 Minn. 370; Matter of Tyson, 6 L. R. A. 472; Walston v. Com., 16 B. Monr. 15; Waterford, etc., Turnpike Co. v. People, 9 Barb. 161; State v. Wilson, 48 N. H. 398; Woart v. Winnick, 3 N. H. 473; State v. Arlin, 39 N. H. 180; Blann v. State, 39 Ala. 353; Strong v. State, 1 Blackf. 193; Thompson v. Missouri, 171 U. S. 380.

§ 23. Civil rights and remedies not affected.

The provisions of this chapter are not to be deemed to affect any civil rights or remedies existing at the time when this chapter takes effect, by virtue of the common law or of any provision of statute.

Derivation: Penal Code, § 720.

Reynolds v. Everett (1893), 67 Hun, 294, 50 N. Y. St. 897, 22 N. Y. Supp. 313.

§ 24. Civil remedies preserved.

The omission to specify or affirm in this chapter any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

Derivation: Penal Code, § 722.

§ 25. Ambassadors and foreign ministers excepted from punishment.

Ambassadors and other public ministers from foreign govern-

ments, accredited to the president or government of the United States, and recognized according to the laws of the United States, with their secretaries, messengers, families and servants, are not liable to punishment in this state, but are to be returned to their own country for trial and punishment.

Derivation: Penal Code, § 27.

§ 26. Principal and accessory.

A party to a crime is, either:

1. A principal; or,
2. An accessory.

Derivation: Penal Code, § 28. See Penal Law, § 2.

See cases cited under Penal Law, section 2.

§ 27. All principals in misdemeanors.

A person who commits or participates in an act which would make him an accessory if the crime committed were a felony, is a principal and may be indicted and punished as such, if the crime be a misdemeanor.

Derivation: Penal Code, § 31.

People v. Clark (1891), 8 N. Y. Cr. 179, 210, 14 N. Y. S. 642; Anderson v. Schlesinger (1896), 16 Misc. 535, 38 N. Y. S. 296; People v. Trainor (1901), 57 App. Div. 422, 68 N. Y. Supp. 263; People v. Taylor (1908), 192 N. Y. 402; see also Ward v. People, 3 Hill, 395, 6 Hill, 114; People v. Mathews, 4 Wend. 229; Lowenstein v. People, 54 Barb. 299; Erwin v. People, 4 Den. 129; People ex rel. Beebe v. Warden, etc., 89 N. Y. Supp. 322.

§ 28. Acts punishable under foreign law.

An act or omission declared punishable by this chapter, is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this chapter.

Derivation: Penal Code, § 678.

People v. Martin (1885), 38 Misc. 67, rev'd 77 App. Div. 396, 175 N. Y. 315; People v. Lyon (1855), 99 N. Y. 219.

§ 29. Violation of statute which imposes no penalty is a misdemeanor.

Where the performance of any act is prohibited by a statute,

and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.

Derivation: Penal Code, § 155.

Foote v. People (1874), 56 N. Y. 321, rev'g 2 Th. & C. 216; Gardner v. People (1875), 62 N. Y. 299, aff'g 2 Hun, 222, 5 Th. & C. 678; People ex rel. Warren v. Beck (1894), 10 Misc. 77, 30 N. Y. Supp. 473; Matter of Vanderhoff (1896), 15 Misc. 434, 36 N. Y. Supp. 833; People v. Olcese (1903), 41 Misc. 104, 83 N. Y. Supp. 973; Keller v. Erie R. Co. (1905), 183 N. Y. 67; see also Mayor v. Eisler, 2 Civ. Proc. 125; Ex parte Pickett, 55 How. Pr. 491; People v. Bogart, 3 Abb. Pr. 202, 3 Park. 143.

§ 30. Jury to find the degree of a crime.

Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, must find the degree of the crime of which he is guilty.

Derivation: Penal Code, § 10.

People v. Rugg (1885), 98 N. Y. 537, 3 N. Y. Cr. 172; People v. Kelly (1885), 35 Hun, 295; People ex rel. Young v. Stout (1894), 81 Hun, 336, 30 N. Y. Supp. 898; People v. Foster (1908), 60 Misc. 13; see also McNevins v. People, 61 Barb. 307.

§ 31. Conviction must precede punishment.

The punishments prescribed by this chapter can be inflicted only upon a legal conviction in a court having jurisdiction.

Derivation: Penal Code, § 9.

Schiffer v. Pruden (1876), 64 N. Y. 52, aff'g 30 N. Y. Super. 167; Blaufus v. People (1877), 69 N. Y. 107, 25 Am. Rep. 148; Davis v. American, etc., Society (1878), 75 N. Y. 362; Matter of McDonald (1884), 32 Hun, 563, 2 N. Y. Cr. 107, 140; People v. Bork (1884), 96 N. Y. 188; People v. Fabian (1908), 126 App. Div. 95; see also McNeill's Case, 1 Cai. 72; Kramer v. Police Department of New York, 53 N. Y. Super. 492; Matter of Browne, 7 Crim. L. Mag. 328; Com. v. Gorham, 99 Mass. 420; Com. v. Lockwood, 109 Mass. 323, 12 Am. Rep. 699; Marion v. State, 16 Nebr. 349.

§ 32. Acquittal or conviction bars indictment for another degree.

Where a prisoner is acquitted or convicted, upon an indictment for a crime consisting of different degrees, he can not thereafter be indicted or tried for the same crime, in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof.

Derivation: Penal Code, § 36.

Guenther v. People (1861), 24 N. Y. 100; People v. Dowling (1881), 84 N.

Y. 478; see People v. Cignarale (1888), 110 N. Y. 23, 33, 16 N. Y. St. 155; People v. Sullivan (1903), 173 N. Y. 122, 130; see also Reg. v. Gilmore, 15 Cox Cr. Cas. 55, 36 Eng. Rep. 500; People v. Saunders, 4 Park. 196.

§ 33. Foreign conviction or acquittal a defense.

Whenever it appears upon the trial of an indictment, that the offense was committed in another state or country, or under such circumstances that the courts of this state or government had jurisdiction thereof, and that the defendant has already been acquitted or convicted on the merits upon a criminal prosecution under the laws of such state, or country, founded upon the act or omission in respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

Derivation: Penal Code, § 679.

§ 34. Morbid criminal propensity no defense.

A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

Derivation: Penal Code, § 23,
Flanigan v. People (1873), 52 N. Y. 467; People v. Otto (1885), 38 Hun, 97, 4 N. Y. Cr. 134; People v. Carpenter (1886), 102 N. Y. 250, 4 N. Y. Cr. 187, aff'g 38 Hun, 490; People v. Krist (1901), 168 N. Y. 29; People v. Waltz, 50 How. Pr. 204.

§ 35. Omission to perform act not punishable if act is performed by another.

No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

Derivation: Penal Code, § 684.

§ 36. Limit of fine where statute does not specify amount.

Where, in this chapter, or in any other statute making any crime punishable by a fine, the amount of the fine is not specified, a fine of not more than five hundred dollars may be imposed.

Derivation: Penal Code, § 706.
People v. Olcese (1903), 41 Misc. 102, 83 N. Y. Supp. 973.

§ 37. Proceedings to impeach preserved.

The omission to specify or affirm in this chapter any ground

or forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

Derivation: Penal Code, § 723.

Collyer v. Collyer (1888), 50 Hun, 422, 21 N. Y. State 119, 3 N. Y. Supp. 310.

§ 38. Application of this chapter to prior offenses.

Nothing contained in any provision of this chapter applies to an offense committed or other act done, at any time before the day when this chapter takes effect. Such an offense must be punished according to, and such act must be governed by, the provisions of law existing when it is done or committed, in the same manner as if this chapter had not been passed; except that, whenever the punishment or penalty for an offense is mitigated by any provision of this chapter, such provision may be applied to any sentence or judgment imposed for the offense after this chapter takes effect. An offense specified in this chapter, committed after the beginning of the day when this chapter takes effect, must be punished according to the provisions of this chapter and not otherwise.

Derivation: Penal Code, § 719.

People v. McTameney (1883), 30 Hun, 505, 13 Abb. N. C. 55, 1 N. Y. Cr. 437, 66 How. 74; Matter of Hoffman (1883), 1 N. Y. Cr. 484; People v. Raymond (1884), 96 N. Y. 38, aff'g 32 Hun, 123; People ex rel. Van Houten v. Sadler (1884), 97 N. Y. 146, 3 N. Y. Cr. 147; People v. Dowling (1884), 1 N. Y. Cr. 530; People v. Keeler (1885), 99 N. Y. 474, 3 N. Y. Cr. 354, 32 Hun, 589; People ex rel. McDonald v. Keeler (1885), 99 N. Y. 463, 3 N. Y. Cr. 354, 32 Hun, 589; People v. Jaehne (1886), 103 N. Y. 198, 3 N. Y. St. 11, 4 N. Y. Cr. 478; People v. Beckwith (1888), 108 N. Y. 67, aff'g 45 Hun, 222; see People v. England (1895), 91 Hun, 152, 36 N. Y. Supp. 534; People ex rel. Lewisohn v. General Sessions (1904), 96 App. Div. 211, 89 N. Y. Supp. 364; see also Matter of Walker, 62 How. Pr. 352; Matter of Hallenbeck, 65 How. 401; People v. Coffee, 62 How. Pr. 445.

§ 39. Military punishments preserved.

This chapter does not affect any power conferred by law upon any court-martial or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal or officers, to impose or

inflict punishment for a contempt; nor any provisions of the law relating to apprentices, bastards, disorderly persons, Indians and vagrants, except so far as any provisions therein are inconsistent with this chapter.

Derivation: Penal Code, § 724.

Matter of Riley (1884), 31 Hun, 612; People ex rel. McDonald v. Keeler (1885), 99 N. Y. 475, 3 N. Y. Cr. 354, rev'g 32 Hun, 563; People v. Champlin (1907), 120 App. Div. 509; Matter of McMahon, 64 How. Pr. 285, 1 N. Y. Cr. 58.

§ 40. Certain statutes continued in force.

Nothing in this chapter affects any of the provisions of the following statutes; but such statutes are recognized as continuing in force, notwithstanding the provisions of this chapter; except so far as they have been repealed or affected by subsequent laws:

1. All acts incorporating municipal corporations, and acts amending acts of incorporation or charters of such corporation, or providing for the election or appointment of officers therein, or defining the powers and duties of such officers;

2. All acts relating to emigrants or other passengers in vessels coming from foreign countries, except as provided in section fifteen hundred and sixty-one of this chapter;

3. All acts for the punishment of intoxication or the suppression of intemperance or regulating the sale or disposition of intoxicating or spirituous liquors;

4. All acts defining and providing for the punishment of offenses and not defined and made punishable by this chapter.

Derivation: Penal Code, § 725, as amended L. 1882, ch. 384, § 1.

SUBD. 1.—People v. Bernardo (1883), 1 N. Y. Cr. 245; People v. Jaehne (1886), 103 N. Y. 198, 199, 4 N. Y. Cr. 478, 128 U. S. 189, 6 N. Y. Cr. Rep. 237; People v. Moran (1890), 123 N. Y. 254, 33 N. Y. St. 398, 8 N. Y. Cr. 106, rev'g 54 Hun, 279, 7 N. Y. Supp. 582, 27 N. Y. St. 20, 7 N. Y. Cr. 333.

SUBD. 3.—People v. Myers (1884), 2 N. Y. Cr. 128, 95 N. Y. 223; People ex rel. Shortell v. Markell (1897), 20 Misc. 149, 45 N. Y. Supp. 904.

SUBD. 4.—Matter of McMahon (1883), 64 How. Pr. 285, 1 N. Y. Cr. 58; People v. Rontey (1889), 117 N. Y. 624, aff'g 4 N. Y. Supp. 235, 6 N. Y. Cr. 249; People v. Page (1889), 4 N. Y. Supp. 780, 7 N. Y. Cr. 7; People v. Van Houten (1895), 13 Misc. 603, 35 N. Y. Supp. 186; Rockwood v. Oakfield, 2 N. Y. St. 331.

§ 41. Manner of prosecution and conviction.

The manner of prosecuting and convicting criminals is regulated by the code of criminal procedure.

Derivation: Penal Code, § 8.

People v. Beckwith (1888), 108 N. Y. 73, 7 N. Y. Cr. 162.

§ 42. Rule when act done in defense of self or another.

An act, otherwise criminal, is justifiable when it is done to prevent the person committing it, or another whom he is bound to protect, from inevitable and irreparable personal injury, and the injury could only be prevented by the act, nothing more being done than is necessary to prevent the injury.

Derivation: Penal Code, § 26.

Scripter v. People (1849), 2 N. Y. 193, 4 Barb. 460; Wood v. Phillips (1871), 43 N. Y. 152, rev'g 1 Lans. 421; Ruloff v. People (1871), 45 N. Y. 213, 5 Lans. 261, 11 Abb. (N. S.) 245; Evers v. People (1875), 3 Hun. 716, 6 N. Y. 625; Sawyer v. People (1883), 91 N. Y. 667; People v. McCarthy (1888), 110 N. Y. 316, aff'g 47 Hun, 491; People v. Lyons (1888), 6 N. Y. Cr. 105, note 119; People v. McGrath (1888), 47 Hun, 325; People v. Carlton (1889), 115 N. Y. 618, 623; People v. Johnston (1893), 139 N. Y. 358, 363; People v. Constantino (1897), 153 N. Y. 24, 12 N. Y. Cr. 339; People v. Kennedy (1899), 159 N. Y. 349; People v. Shanley (1900), 49 App. Div. 56, 63 N. Y. Supp. 449; People v. Cantor (1902), 71 App. Div. 185, 75 N. Y. Supp. 688, 16 N. Y. Cr. 380; People v. Fiori (1908), 123 App. Div. 174, 108 N. Y. Supp. 416; see also Rowe v. United States, 164 U. S. 545; Harrington v. People, 6 Barb. 607; Cory v. People, 45 Barb. 262; Patterson v. People, 46 Barb. 625; Gyre v. Culver, 47 Barb. 592; People v. Lamb, 54 Barb. 342, 2 Keyes, 360, 2 Abb. Pr. (N. S.) 148; People v. Austin, 1 Park. 154; People v. [illegible] Park. 35; Plommer v. People, 4 Park. 558; Uhl v. People, 5 Park. 42[illegible]; [illegible] v. Handl, 4 Alb. L. J. 91; Morgan v. Durfee, 21 Alb. L. J. 215. People v. Gulick, Hill & Denio, 129; People v. Minisci, 12 N. Y. St. 720; People v. Piper, Edm. Sel. Cas. 180.

§ 43. Penalty for acts for which no punishment is expressly prescribed.

A person who wilfully and wrongfully commits any act which seriously injures the person or property of another, or [illegible]

ARTICLE 4.

ABDUCTION.

SECTION 70. Abduction.
71. No conviction to be had on unsupported testimony.

§ 70. Abduction.

A person who:

1. Takes, receives, employs, harbors or uses, or causes or procures to be taken, received, employed or harbored or used, a female under the age of eighteen years, for the purpose of prostitution; or, not being her husband, for the purpose of sexual intercourse; or, without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage; or,

2. Inveigles or entices an unmarried female, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse; or,

3. Takes or detains a female unlawfully against her will, with the intent to compel her, by force, menace or duress, to marry him, or to marry any other person, or to be defiled; or,

4. Being parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, consents to her taking or detaining by any person for the purpose of prostitution or sexual intercourse;

Is guilty of abduction and punishable by imprisonment for not more than ten years, or by a fine of not more than one thousand dollars, or by both.

Derivation: Penal Code, § 282, as amended L. 1884, ch. 46, § 2; L. 1886, ch. 31, § 1; L. 1895, ch. 460, § 2; L. 1902, ch. 83.

Kenyon v. People (1863), 26 N. Y. 206, 5 Park. 254; Kaufman v. People (1877), 11 Hun, 82; Scnicker v. People (1882), 88 N. Y. 192; People v. Seeley (1885), 101 N. Y. 642, 3 N. Y. Cr. 225, 37 Hun, 190; Moot v. Moot (1885), 37 Hun, 288; People v. Plath (1885), 100 N. Y. 590, 4 N. Y. Cr. Rep. 54, rev'g 36 Hun, 454; People v. Powell (1886), 4 N. Y. Cr. 590; People v. Scott (1886), 5 N. Y. Cr. Rep. 61, aff'd 4 N. Y. Cr. Rep. 306; People v. Sheppard (1887), 44 Hun, 565, 5 N. Y. Cr. 136, 9 N. Y. St. 35; People v. O'Sullivan (1887), 104 N. Y. 490, 5 N. Y. St. Rep. 702; People v. Gibson (1889), 4 N. Y. Supp. 170, 6 N. Y. Cr. 390; People v. Brown (1893), 71 Hun, 601, 24 N. Y. S. 1111; People v. Ragone (1900), 54 App. Div. 498, 67 N. Y. Supp. 23; People v. Butler (1900), 55 App. Div. 361, 66 N. Y. Supp. 851;

People v. Dickenson (1901), 58 App. Div. 202, 15 N. Y. Cr. 365, 68 N. Y. S. 715; People v. Swasey (1902), 77 App. Div. 185, 78 N. Y. Supp. 1103; People v. Miller (1902), 70 App. Div. 592, 75 N. Y. Supp. 655; Conte v. Conte (1903), 82 App. Div. 337, 81 N. Y. S. 923; People v. Cerami (1905), 101 App. Div. 366, 91 N. Y. S. 1027, 19 N. Y. Cr. 80; People v. Smith (1906), 114 App. Div. 513, 100 N. Y. Supp. 259, 20 N. Y. Cr. 310; People v. Wolf (1906), 183 N. Y. 464, 19 N. Y. Cr. 462, rev'g 107 App. Div. 449, 95 N. Y. Supp. 264, 19 N. Y. Cr. 454; People v. Spriggs (1907), 119 App. Div. 236, 104 N. Y. Supp. 539; see also State v. George, 93 N. C. 56; Carpenter v. People, 8 Barb. 603; People v. Cook, 61 Cal. 479; Com. v. Murphy, 165 Mass. 66, 30 L. R. A. 735; Safford v. People, 1 Park, 478; Reg. v. Kipps, 4 Cox Cr. Cas. 167; People v. Wha Lee Mon, 37 N. Y. St. 284, 13 N. Y. Supp. 767; Reg. v. Mycock, 12 Cox Cr. Cas. 28, 2 Eng. Rep. 177; Reg. v. Prince, L. R. 2 Cr. Cas. Res. 154, 1 Am. Crim. L. R. 1, 13 Eng. Rep. 385; Reg. v. Packer, 16 Cox Cr. Cas. 57, 37 Eng. Rep. 800; People v. Parshall, 6 Park, 129; Lyons v. State, 52 Ind. 426, 1 Am. Crim. Rep. 28; State v. Gordon, 46 N. J. L. 432.

§ 71. (Am'd, 1909.) No conviction to be had on unsupported testimony.

No conviction can be had for abduction or compulsory marriage, upon the testimony of the female abducted or compelled, unsupported by other evidence.

Derivation: Penal Code, § 283, as amended by L. 1886, ch. 663; L. 1909, ch. 524. **In effect May 27, 1909.** See, also, Penal Law, §§ 533, 2013.

ARTICLE 6.

ABORTION.

SECTION 80. Definition and punishment of abortion.
81. Killing of child in attempting miscarriage.
82. Selling drugs or instruments to procure a miscarriage.

§ 80. Definition and punishment of abortion.

A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, either:

1. Prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drug, or substance; or,

2. Uses, or causes to be used, any instrument or other means,

Is guilty of abortion, and is punishable by imprisonment in a state prison for not more than four years, or in a county jail for not more than one year.

Derivation: Penal Code, § 294.

Lohman v. People (1848), 1 N. Y. 383, aff'g 2 Barb. 216; Evans v. People (1872), 49 N. Y. 86-87; Bradford v. People (1880), 20 Hun, 309; People v. Vedder (1884), 98 N. Y. 630, 3 N. Y. Cr. Rep. 32, aff'g 34 Hun, 480, 3 N. Y. Cr. Rep. 23; People v. Murphy (1886), 101 N. Y. 126, 3 How. Pr. (N. S.) 469, 4 N. Y. Cr. Rep. 95, rev'g 3 N. Y. Cr. Rep. 338; People v. Meyers (1887), 107 N. Y. 671, 12 N. Y. St. 862, aff'g 5 N. Y. Cr. Rep. 120, 7 N. Y. St. Rep. 217; People v. Bliven (1889), 112 N. Y. 79, 20 N. Y. St. 486, 6 N. Y. Cr. 365, aff'g 14 N. Y. St. 495; People v. Phelps (1891), 133 N. Y. 269, 44 N. Y. St. 910, aff'g 61 Hun, 115, 39 N. Y. St. Rep. 598, 15 N. Y. Supp. 440; People v. McGongeal (1892), 136 N. Y. 62; People v. Van Zile (1894), 143 N. Y. 368; People v. O'Neill (1901), 15 N. Y. Cr. 391, 34 Misc. 285, 103 St. Rep. 618, 69 N. Y. S. 617; People v. Conrad (1905), 185 N. Y. 529, 19 N. Y. Cr. 263, 102 App. Div. 566, 92 N. Y. S. 606; People v. Hoffman (1907), 118 App. Div. 862, 103 N. Y. S. 1000, 21 N. Y. Cr. 140; see also Montgomery v. State, 80 Ind. 338, 41 Am. Rep. 815; State v. Gedicke, 43 N. J. Law, 86; Dougherty v. People, 1 Colo. 517; Com. v. Drake, 124 Mass. 21; Reg. v. Cramp, 5 Q. B. D. 307; Railing v. Com., 110 Pa. St. 100; Reg. v. Stett, 15 Can. L. J. 193; Swan v. People, 13 Week. Dig. 518, citing 66 Barb. ——, 56 N. Y. 618, 45 N. Y. 1, 32 Barb. 321; State v. Fitzgerald, 49 Iowa, 260, 31 Am. Rep. 148; Watson v. State, 9 Tex. App. 237.

§ 81. Killing of child in attempting miscarriage.

A pregnant woman, who takes any medicine, drug, or substance,

or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, is punishable by imprisonment for not less than one year, nor more than four years.

Derivation: Penal Code, § 295.

People v. Vedder (1884), 98 N. Y. 630, 3 N. Y. Cr. Rep. 23, aff'g 34 Hun, 281, aff'g 3 N. Y. Cr. Rep. 32; People v. Meyers (1887), 7 N. Y. State, 217, 5 N. Y. Cr. 120; People v. Phelps (1892), 133 N. Y. 267, aff'g 61 Hun, 115, 15 N. Y. Supp. 440; People v. McGonegal (1892), 136 N. Y. 62, 48 N. Y. St. 900; Bigelow v. Drummond (1904), 42 Misc. 616, 87 N. Y. Supp. 581.

§ 82. Selling drugs or instruments to procure a miscarriage.

A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.

Derivation: Penal Code, § 297.

ARTICLE 8.

ADULTERY.

SECTION 100. Adultery defined.
101. Adultery a misdemeanor.
102. Punishment for adultery.
103. Conviction can not be had on unsupported testimony.

§ 100. Adultery defined.

Adultery is the sexual intercourse of two persons, either of whom is married to a third person.

Derivation: Penal Code, § 280a, added L. 1907, ch. 583. See Penal Law, §§ 101, 103, also § 2010 as to rape in second degree.

§ 101. Adultery a misdemeanor.

A person who commits adultery is guilty of a misdemeanor.

Derivation: Penal Code, § 280a, added L. 1907, ch. 583.

§ 102. Punishment for adultery.

A person convicted of a violation of this article is punishable by imprisonment in a penitentiary or county jail, for not more than six months or by a fine of not more than two hundred and fifty dollars, or by both.

Derivation: Penal Code, § 280b, added L. 1907, ch. 583.

§ 103. Conviction can not be had on unsupported testimony.

A conviction under this article can not be had on the uncorroborated testimony of the person with whom the offense is charged to have been committed.

Derivation: Penal Code, § 280a, added L. 1907, ch. 583. See Penal Law, §§ 100-101.

ARTICLE 10.

ADVERTISING.

SECTION 120. Advertising to procure divorces.
121. Affixing advertisement to property of another.

§ 120. Advertising to procure divorces.

Whoever prints, publishes, distributes or circulates, or causes to be printed, published, distributed or circulated any circular, pamphlet, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind offering to procure or to aid in procuring any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage, appear or act as attorney or counsel in any suit for alimony or divorce or the severance, dissolution or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

Derivation: Penal Code, § 148a, added L. 1902, ch. 203, § 1.
People v. McCabe, 18 Colo. 186, 36 Am. St. Rep. 270.

§ 121. Affixing advertisement to property of another.

A person who places upon or affixes to, or causes or procures to be placed upon or affixed to, real property not his own, or a rock, tree, wall, fence, or other structure thereupon, without the consent of the owner, any words, characters, or device, as a notice of, or reference to, any article, business, exhibition, profession, matter or event, is punishable by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both.

The placing or affixing of any words, characters, device, or notice, of any article, business, or other thing, to or upon any property or place specified in this section is presumptive evidence that the proprietor, vendor, or exhibitor thereof caused or procured the same to be so placed or affixed.

Derivation: Penal Code, §§ 643-644.

ARTICLE 12.

AGENTS.

SECTION 140. Agents must file statement of agency.
141. Failure to make and file statement a misdemeanor.
142. Duty and fees of county clerk.
143. Relief of principal from liability for future acts of agent.

§ 140. Agents must file statement of agency.

Any person now carrying on or conducting a general mercantile or manufacturing business within this state, or hereafter commencing such business at or in a fixed location, as agent or manager for another shall, within thirty days after May sixteenth, eighteen hundred and ninety-three, or the commencement of such business, file a sworn statement, verified by such agent and principal, in the county clerk's office of the county within which said business is carried on, stating the nature of the business and the full name and residence of such principal.

Derivation: Penal Code, § 363a(1), added L. 1893, ch. 708, § 1.

O'Toole v. Garvin (1874), 1 Hun, 92; Wood v. Erie Ry. Co. (1878), 72 N. Y. 196, aff'g 9 Hun, 648; McMurray v. Gage (1897), 19 App. Div. 505, 46 N. Y. Supp. 608; see also Swords v. Ownes, 43 How. Pr. 176; Rosenheim v. Rosenfield, 13 N. Y. Supp. 721; Barron v. Yost, 16 Daly, 441; Cohn v. Gottschalk, 16 N. Y. St. 818, 2 N. Y. Supp. 13.

§ 141. Failure to make and file statement a misdemeanor.

Any person failing to make and file the statement required by section one hundred and forty, shall be guilty of a misdemeanor.

Derivation: Penal Code, § 363a(4), added L. 1893, ch. 708, § 1.
See Penal Law, section 140.

§ 142. Duty and fees of county clerk.

The county clerk shall keep a register of the names of such agents in alphabetical order, and of their principals, for which registering and filing he shall receive a fee of one dollar; and copies of such certificate and registry certified by him and the affidavit of such publication shall be evidence.

Derivation: Penal Code, § 363a(3), added L. 1893, ch. 708, § 1.
See Penal Law, section 140.

§ 143. Relief of principal from liability for future acts of agent.

Any person or principal may be relieved from all liability for the future act of such agent or manager by filing in the office of the county clerk where the original statement appointing such agent or manager is filed, a statement revoking such agent or managership, to take effect ten days after the filing thereof; provided he shall, at or before the date of such filing, serve either personally or by mail, in the manner prescribed by the code of civil procedure for service of papers in civil actions, a copy of such revocation statement on each person or firm with whom such principal shall have transacted any business through such agent or manager within six months previous to such filing. But failure to make service of such statement shall not invalidate such revocation except as to persons not so served, said statement to be acknowledged before an officer authorized to take acknowledgments of deeds and to be published in at least three consecutive issues of the newspaper published in the county and nearest to the place where the business of said agent or manager is carried on; but if no newspaper is published in said county, then said statement shall be published in the newspaper published nearest to the place where such business shall be carried on.

Derivation: Penal Code, § 363a(2), added L. 1893, ch. 708, and amended L. 1895, ch. 890, § 1.

See Penal Law, section 140.

ARTICLE 14.

ANARCHY.

SECTION 160. Criminal anarchy defined.
161. Advocacy of criminal anarchy.
162. Assemblages of anarchists.
163. Permitting premises to be used for assemblages of anarchists.
164. Liability of editors and others.
165. Leaving state with intent to elude provisions of this article.
166. Witnesses' privilege.

§ 160. Criminal anarchy defined.

Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony.

Derivation: Penal Code, § 468a, added L. 1902, ch. 371.
Von Gerichten v. Scitz (1904), 94 App. Div. 130, 87 N. Y. Supp. 968.

§ 161. Advocacy of criminal anarchy.

Any person who:

1. By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or,

2. Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or,

3. Openly, wilfully and deliberately justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of any civilized nation having an organized government because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or,

4. Organizes or helps to organize or becomes a member of or

voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such doctrine,

Is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Derivation: Penal Code, § 468b, added L. 1902, ch. 371.
Von Gerichten v. Seitz (1904), 94 App. Div. 130, 87 N. Y. Supp. 968.

§ 162. Assemblages of anarchists.

Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in section one hundred and sixty, such an assembly is unlawful, and every person voluntarily participating therein by his presence, aid or instigation, is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of more than five thousand dollars, or both.

Derivation: Penal Code, § 468d, added L. 1902, ch. 371.

§ 163. Permitting premises to be used for assemblages of anarchists.

The owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room, who wilfully and knowingly permits therein any assemblage of persons prohibited by section one hundred and sixty-two, or who, after notification that the premises are so used permits such use to be continued, is guilty of a misdemeanor, and punishable by imprisonment for not more than two years, or by a fine or not more than two thousand dollars, or both.

Derivation: Penal Code, § 468e, added L. 1902, ch. 371.

§ 164. Liability of editors and others.

Every editor or proprietor of a book, newspaper or serial and every manager of a partnership or incorporated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor, the defendant may show in this defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication and whose act was disavowed by him so soon as known.

Derivation: Penal Code, § 468c, added L. 1902, ch. 371.

§ 181. Keeping a place where animals are fought.

A person who keeps or uses, or is in any manner connected with, or interested in the management of, or receives money for the admission of any person to, a house, apartment, pit or place kept or used for baiting or fighting any bird or animal, and any owner or occupant of a house, apartment, pit or place who wilfully procures or permits the same to be used or occupied for such baiting or fighting, is guilty of a misdemeanor. Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and to arrest any person there present found violating any of said laws, and to bring such person before the nearest magistrate of competent jurisdiction, to be dealt with according to law.

Derivation: Penal Code, § 665, as amended L. 1888, ch. 144, § 2. People v. Klock (1888), 48 Hun, 275, 16 N. Y. St. 565.

§ 182. Instigating fights between birds and animals.

A person who sets on foot, instigates, promotes, or carries on, or does any act as assistant, umpire, or principal, or is a witness of, or in any way aids in or engages in the furtherance of any fight between cocks or other birds, or dogs, bulls, bears, or other animals, premeditated by any person owning, or having custody of such birds or animals, is guilty of a misdemeanor punishable by fine not less than ten dollars, nor more than one thousand dollars, or by imprisonment not less than ten days nor more than one year, or both.

Derivation: Penal Code, § 664.

§ 183. Officer may take possession of animals or implements used in fights among animals.

Any officer authorized by law to make arrests may lawfully take possession of any animals, or implements, or other property used or employed, or about to be used or employed, in the violation of any provision of law relating to fights among animals. He

shall state to the person in charge thereof, at the time of such taking, his name and residence, and also, the time and place at which the application provided for by the next section will be made.

Derivation: L. 1875, ch. 97, § 1.

§ 184. Disposition of animals or implements used in fights among animals.

The officer, after taking possession of such animals, or implements, or other property, pursuant to the preceding section, shall apply to the magistrate before whom complaint is made against the offender violating such provision of law, for the order next hereinafter mentioned, and shall make and file an affidavit with such magistrate, stating therein the name of the offender charged in such complaint, the time, place and description of the animals, implements or other property so taken, together with the name of the party who claims the same, if known, and that the affiant has reason to believe and does believe, stating the grounds of such belief, that the same were used or employed, or were about to be used or employed, in such violation, and will establish the truth thereof upon the trial of such offender. He shall then deliver such animals, implements, or other property, to such magistrate, who shall thereupon, by order in writing, place the same in the custody of an officer or other proper person in such order named and designated, to be by him kept until the trial or final discharge of the offender, and shall send a copy of such order, without delay, to the district attorney of the county. The officer or person so named and designated in such order, shall immediately thereupon assume such custody, and shall retain the same for the purpose of evidence upon such trial, subject to the order of the court before which such offender may be required to appear, until his final discharge or conviction. Upon the conviction of such offender, the animals, implements, or other property, shall be adjudged by the court to be forfeited. In the event of the acquittal or final discharge, without conviction, of such offender, such court shall, on demand, direct the delivery of the property so held in custody to the owner thereof.

Derivation: L. 1875, ch. 97, § 2, as amended L. 1875, ch. 246, § 1.

§ 185. Overdriving, torturing andinjuring animals; failure to provide proper sustenance.

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who wilfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

Nothing herein contained shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college or university of this state.

Derivation: Penal Code, § 655; second paragraph, L. 1867, ch. 375, § 10.

People v. Spec. Sess. (1875), 4 Hun, 441; Davis v. Society (1878), 75 N. Y. 362, 16 Abb. Pr. (N. S.) 73, aff'g 6 Daly, 81; Warren v. Perry (1878), 14 Hun, 337; People v. Theobald (1885), 92 Hun, 182; Rutherford v. Krause (1894), 8 Misc. 547; Saunders v. Post Standard Co. (1905), 107 App. Div. 84, 86, 94 N. Y. Supp. 993; McCarg v. Burr (1906), 186 N. Y. 469, 106 App. Div. 275, 277, 94 N. Y. Supp. 675; see also People v. Tinsdale, 10 Abb. Pr. (N. S.) 374; Broadway Stage Co. v. Am. Soc., etc., 15 Abb. Pr. (N. S.) 51; People v. Brunell, 48 How. Pr. 435; Paine v. Bergh, 1 City Ct. Rep. 160; Ross's Case, 3 City Hall Rec. 191; Lachine's Case, 4 City Hall Rec. 26; Morris' Case, 6 City Hall Rec. 62; People v. Stokes, 1 Wheel. Cr. Cas. 111; Callaghan v. Society, 16 Cox Cr. Cas. 101, 37 Eng. Rep. 813; Ford v. Wiley, 23 Q. B. Div. 203, 40 Alb. L. J. 270.

§ 186. Abandonment of disabled animal.

A person being the owner or possessor, or having charge or custody of a maimed, diseased, disabled or infirm animal, who abandons such animal, or leaves it to die in a street, road or public place, or who allows it to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor. Any agent or officer of the American society for the prevention of cruelty to animals, or of any society duly incorporated for that purpose, or any police officer, may lawfully destroy or cause to be destroyed any animal

found abandoned and not properly cared for, appearing in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered, injured or diseased past recovery for any useful purpose; or after such agent or officer has obtained in writing from the owner of such animal his consent to such destruction. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place of custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon.

Derivation: Penal Code, § 656, as amended L. 1888, chs. 144, 490; L. 1907, ch. 192, § 1.

Saunders v. Post Standard Co. (1905), 107 App. Div. 84, 86, 94 N. Y. Supp. 993; Sahr v. Scholle (1895), 89 Hun, 42, 35 N. Y. Supp. 97; People v. Christy (1892), 8 N. Y. Cr. 483, 20 N. Y. Supp. 278.

§ 187. Failure to provide proper food and drink to impounded animal.

A person who, having pounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor. In case any animal shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which any such animal shall be so confined, and to supply it with necessary food and water, so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

Derivation: Penal Code, § 657. All after first sentence is L. 1867, ch. 375, § 4.

§ 188. Selling or offering to sell or exposing diseased animal.

A person who wilfully sells or offers to sell, uses, exposes, or causes or permits to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the life or health of human beings, or animals, or which is deceased past recovery, or who refuses upon demand to deprive of life an animal affected with any such disease, is guilty of a misdemeanor.

Derivation: Penal Code, § 658.

Fisher v. Clark, 41 Barb. 329; Mills v. N. Y. & Harlem R. Co., 2 Robt. 286; Fultz v. Wycoff, 25 Ind. 321; Eaton v. Winne, 20 Mich. 156, 4 Am. Rep. 377; Barnum v. Van Dusen, 16 Conn. 200; Mullett v. Mason, L. R. I. C. P. 559.

§ 189. Carrying animal in a cruel manner.

A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor.

Derivation: Penal Code, § 659.

§ 190. Poisoning or attempting to poison animals.

A person who unjustifiably administers any poisonous or noxious drug or substance to a horse, mule or domestic cattle or unjustifiably exposes any such drug, or substance with intent that the same shall be taken by a horse, mule or by domestic cattle, whether such horse, mule or domestic cattle be the property of himself or another, is guilty of a felony, punishable by imprisonment in a state's prison, for not more than five years. A person who unjustifiably administers any poisonous or noxious drug or substance to an animal, other than a horse, mule or domestic cattle, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal, other than a horse, mule or domestic cattle, whether such animal be the property of himself or another, is guilty of a misdemeanor. (Amended by L. 1910, ch. 190, in effect Sept. 1, 1910.)

Derivation: Penal Code, § 660.

People v. Knatt (1898), 156 N. Y. 302, 13 N. Y. Cr. 92.

§ 191. Throwing substance injurious to animals in public place.

A person who wilfully throws, drops or places, or causes to be thrown, dropped or placed upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal, is guilty of a misdemeanor.

Derivation: Penal Code, § 662.

People v. Sheridan, 1 N. Y. Supp. 61, 15 N. Y. St. 939.

§ 192. Keeping milch cows in unhealthy places and feeding *them with* food producing unwholesome milk.

A person who keeps a cow or any animal for the production of

milk, in a crowded or unhealthy place, or in a diseased condition, or feeds such cow or animal upon any food that produces impure or unwholesome milk, is punishable by a fine not less than fifty dollars, or imprisonment not exceeding one year, or by both.

Derivation: Penal Code, § 662.

§ 193. Transporting animals for more than twenty-four consecutive hours without unloading.

A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of, or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-four consecutive hours, without unloading for rest, water and feeding, during ten consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received, must be computed. If the owner, agent, consignee, or other person in charge of any such animals refuses or neglects upon demand to pay for the care or feed of the animals while so unloaded or rested, the railway company, or other carriers thereof, may charge the expense thereof to the owner or consignee and shall have a lien thereon for such expense.

Derivation: Penal Code, § 663.

Galloway v. Erie Railroad Co. (1907), 116 App. Div. 780, 102 N. Y. Supp. 25, 107 App. Div. 210, 214; Hastings v. New York, etc., R. Co., 6 N. Y. Supp. 837, 25 N. Y. St. 250.

§ 194. Running horses on highway.

A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes, or permits them to run, is guilty of a misdemeanor.

Derivation: Penal Code, § 666, as amended L. 1902, ch. 266, § 1; L. 1904, ch. 539.

People v. Patterson (1902), 38 Misc. 79, 16 N. Y. Cr. 508, 77 N. Y. Supp. 155; Harrington v. City of New York (1903), 40 Misc. 166, 81 N. Y. Supp. 667; People v. Ellis (1903), 88 App. Div. 474, 85 N. Y. Supp. 120; Johnson v. City of New York (1905), 109 App. Div. 821, 825, 96 N. Y. Supp. 754.

§ 195. Leaving state to avoid provisions of this article.

A person who leaves this state with intent to elude any of the

provisions of this article or to commit any act out of this state which is prohibited by them, or who, being a resident of this state, does any act without this state, pursuant to such intent, which would be punishable under such provisions, if committed within this state, is punishable in the same manner as if such act had been committed within this state.

Derivation: Penal Code, § 667.

§ 196. To whom fines and penalties are to be paid.

All fines, penalties or forfeitures imposed or collected for a violation of the provisions of this article, or of any act for the prevention of cruelty to animals, now in force or hereafter passed, must be paid on demand to the American society for the prevention of cruelty to animals; except where the prosecution shall be instituted or conducted by a society for the prevention of cruelty to animals duly incorporated under the general laws of this state, in which case such fine, penalty or forfeiture must be paid on demand to such society. A constable or police officer must, and any agent or officer of any said societies may, arrest and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of this article. Any officer or agent of any of said societies may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any person who shall interfere with or obstruct any such officer or agent in the discharge of his duty shall be guilty of a misdemeanor. Any of said societies may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting animals and may aid in presenting the law and facts before such court, tribunal or magistrate in any proceeding taken. The officers and agents of all duly incorporated societies for the prevention of cruelty to animals or children are hereby declared to be peace officers within the provisions of section one hundred and fifty-four of the code of criminal procedure.

Derivation: Penal Code, § 668, as amended L. 1888, chs. 144, 490.

Amer. Society v. City of Gloversville (1894), 78 Hun, 40, 4 N. Y. St. 808, 25 Week. Dig. 229, 29 N. Y. Supp. 257; Fox v. Mohawk, etc., Society (1897), 20 Misc. 467, 46 N. Y. Supp. 232, rev'd 25 App. Div. 30, 48 N. Y. Supp. 625, aff'd 165 N. Y. 517.

ARTICLE 18.

ARSON.

SECTION 220. Definitions.
221. Arson in first degree.
222. Arson in second degree.
223. Arson in third degree.
224. Punishment for arson.
225. Intent to destroy building requisite.
226. Contiguous buildings.
227. Ownership of building.

§ 220. Definitions.

Building. Any house, vessel, or other structure, capable of affording shelter for human beings, or appurtenant to, or connected with a structure so adapted, is a "building" within the meaning of this article.

Inhabited building. A building is deemed an "inhabited building" within the meaning of this article, any part of which has usually been occupied by a person lodging therein at night.

Night time. The words "night time," as used in this article, include the period between sunset and sunrise, and every building or structure, which shall have been usually occupied by persons lodging therein at night, is a dwelling house within the meaning of this article.

Derivation: Penal Code, §§ 492-494.

Building.—Rouse v. Catskill, etc., Steamboat Co. (1891), 59 Hun, 82, 35 N. Y. St. 493, 13 N. Y. Supp. 128; State v. Johnson, 48 Ga. 116, 51 Cal. 320, 34 id. 245, 12 Cox C. C. 106, 1 Metc. 258, 23 Upper Can. Q. B. 492, 1 Leach, 318, 2 Root, 516, 4 Gill & J. 402; State v. O'Toole, 29 Conn. 342, 5 Upper Can. Q. B. (O. S.) 522; Com. v. Barney, 10 Cush. 478.

Inhabited Building.—People v. Cotteral, 18 Johns. 115; Smith v. State, 23 Tex. App. 357, 59 Am. Rep. 773.

§ 221. Arson in first degree.

A person who wilfully burns, or sets on fire, in the night time:

1. A dwelling-house in which there is, at the time, a human being; or,

2. A car, vessel, or other vehicle, or a structure or building other

than a dwelling-house, wherein, to the knowledge of the offender, there is, at the time, a human being,

Is guilty of arson in the first degree.

Derivation: Penal Code, § 486.

Woodford v. People (1874), 62 N. Y. 117, 3 Hun, 310; Levy v. People (1880), 80 N. Y. 327, aff'g 19 Hun, 383; People v. Fanshawe (1893), 137 N. Y. 68, 47 N. Y. St. 335, 65 Hun, 83, 19 N. Y. Supp. 865; McKelvey v. Marsh (1901), 63 App. Div. 396, 71 N. Y. Supp. 541; People v. Wagner (1904), 180 N. Y. 58; see also People v. Henderson, 1 Park, 560; People v. Orcut, 1 Park. 252; Hennessy v. People, 21 How. Pr. 239; People v. Butler, 16 Johns. 203.

§ 222. Arson in second degree.

A person who:

1. Commits an act of burning in the day time, which, if committed in the night time, would be arson in the first degree; or,

2. Wilfully burns, or sets on fire, in the night time, a dwelling-house, wherein, at the time, there is no human being; or,

3. Wilfully burns, or sets on fire, in the night time, a building not inhabited, but adjoining or within the curtilage of an inhabited building, in which there is, at the time, a human being, so that the inhabited building is endangered, even though it is not in fact injured by the burning; or,

4. Wilfully burns, or sets on fire, in the night time, a car, vessel, or other vehicle, or a structure or building, ordinarily occupied at night by a human being, although no person is within it at the time,

Is guilty of arson in the second degree.

Derivation: Penal Code, § 487.

People v. Burton (1894), 77 Hun, 498, 28 N. Y. Supp. 1081; People v. Fitzgerald (1897), 20 App. Div. 140, 46 N. Y. Supp. 1020, 12 N. Y. Cr. 524; People v. Smith (1899), 37 App. Div. 280, 55 N. Y. Supp. 932, 14 N. Y. Cr. 83; see also People v. Durkin, 5 Park, 243; Peverelley v. People, 3 Park. 59; Isaac's Case, 2 East P. C. 1031; State v. McLaughlin, 8 Jones, 354; People v. Taylor, 2 Mich. 250; Roberts' Case, 2 East P. C. 1030; Rex v. Peltey, Leach C. C. 277; Rex v. Fletcher, 2 Car & K. 215, 2 Russ. 550.

§ 223. Arson in third degree.

A person who wilfully burns, or sets on fire:

1. A vessel, car, or other vehicle, or a building, structure, or other erection, which is at the time insured against loss or damage by fire, with intent to prejudice the insurer thereof; or,

2. A vessel, car, or other vehicle, or a building, structure, or

other erection, under circumstances not amounting to arson in the first or second degree,

Is guilty of arson in the third degree.

Derivation: Penal Code, § 488.

Shepherd v. People (1859), 19 N. Y. 537; Greenfield v. People (1881), 85 N. Y. 75, aff'g 23 Hun, 154; Carncross v. People (1883), 1 N. Y. Cr. 518; People v. Newton (1885), 3 N. Y. Cr. 406; People v. O'Neil (1889), 112 N. Y. 355, aff'g 49 Hun, 422, 4 N. Y. Supp. 119; People v. Fanshawe (1893), 137 N. Y. 68, aff'g 65 Hun, 77, 19 N. Y. Supp. 865; People v. Butler (1901), 62 App. Div. 508, 71 N. Y. Supp. 129, 15 N. Y. Cr. 508; People v. Brown (1906), 110 App. Div. 490, 96 N. Y. Supp. 957; see also People v. Henderson, 1 Park, 560.

§ 224. Punishment for arson.

Arson is punishable as follows:

1. In the first degree, by imprisonment for a term not exceeding forty years.

2. In the second degree, by imprisonment for a term not exceeding twenty-five years.

3. In the third degree, by imprisonment for a term not exceeding fifteen years.

Derivation: Penal Code, § 489, as amended L. 1892, ch. 662, § 12; L. 1895, ch. 902, § 1; L. 1897, ch. 549, § 1.

§ 225. Intent to destroy building requisite.

The burning of a building under circumstances which show beyond a reasonable doubt that there was no intent to destroy it, is not arson.

Derivation: Penal Code, § 490.

People v. Fanshawe (1893), 137 N. Y. 68, aff'g 65 Hun, 77, 19 N. Y. Supp. 865; see also People v. Jones, 2 Edm. Sel. Cas. 86; People v. Long, 2 Edm. Sel. Cas. 129.

§ 226. Contiguous buildings.

Where an appurtenance to a building is so situated with reference to such building, or where any building is so situated with reference to another building that the burning of the one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing provisions, against any person actually participating in the original setting on fire, as of the

moment when the fire from the one communicates to and sets on fire the other.

Derivation: Penal Code, § 491.

Woodford v. People (1874), 3 Hun, 310, 62 N. Y. 117; Arkell v. Insurance Co. (1877), 69 N. Y. 193, aff'g 7 Hun, 455; see also Hennessey v. People, 21 How. Pr. 239; Olsen v. Insurance Co., 35 Minn. 432, 59 Am. Rep. 333.

§ 227. Ownership of building.

To constitute arson it is not necessary that another person than the defendant should have had ownership in the building set on fire.

Derivation: Penal Code, § 495.

Shepherd v. People, 19 N. Y. 537; State v. Taylor, 45 Me. 322; People v. Smith, 3 How. Pr. 226; People v. Van Blarcum, 2 Johns. 105.

ARTICLE 20.

ASSAULT.

SECTION 240. Assault in first degree defined.
241. Punishment for assault in first degree.
242. Assault in second degree.
243. Punishment for assault in second degree.
244. Assault in third degree.
245. Punishment for assault in third degree.
246. Use of force not unlawful in certain cases.

§ 240. Assault in first degree defined.

A person who, with an intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another:

1. Assaults another with a loaded fire arm, or any other deadly weapon, or by any other means or force likely to produce death; or,

2. Administers to or causes to be administered to or taken by another, poison, or any other destructive or noxious thing, so as to endanger the life of such other,

Is guilty of assault in the first degree.

Derivation: Penal Code, § 217.

Foster v. People (1872), 50 N. Y. 598, 603; Lenahan v. People (1874), 3 Hun, 164; Filkins v. People (1877), 69 N. Y. 101, 25 Am. Rep. 143, rev'g 1 Sheld. 104; People v. Whedon (1884), 2 N. Y. Cr. 318; People v. Carlton (1885), 115 N. Y. 618; People v. Sullivan (1885), 4 N. Y. Cr. 193; People v. Burgess (1887), 45 Hun, 157, 5 N. Y. Cr. 514; People v. Dartmore (1888), 48 Hun, 320, 2 N. Y. Supp. 310; People v. Connor (1889), 53 Hun, 352, 6 N. Y. Supp. 220; People v. Ryan (1889), 55 Hun, 214, 8 N. Y. Supp. 241, 7 N. Y. Cr. 448; People v. O'Connell (1891), 60 Hun, 109, 14 N. Y. Supp. 485; People v. Rockhill (1893), 74 Hun, 241, 26 N. Y. Supp. 222; People v. O'Connor (1903), 82 App. Div. 61, 81 N. Y. Supp. 555; People v. Huson (1906), 197 N. Y. 97, rev'g 114 App. Div. 693, 99 N. Y. Supp. 1081, 20 N. Y. Cr. 338; People v. Way (1907), 119 App. Div. 344, 104 N. Y. Supp. 277, 21 N. Y. Cr. 150, aff'd 191 N. Y. 533; People v. Randazzo (1908), 127 App. Div. 825; see also People v. Johnson, 9 Week. Dig. 384; People v. Cavanaugh, 62 How. Pr. 187; People v. O'Dell, 14 Week. Dig. 403; O'Leary v. People, 18 How. Pr. 187, 193; People v. Shaw, 1 Park, 327; People v. Vinegar, 2 Park, 224; Hagaman's Case, 3 City Hall Rec. 73; State v. Keasling, 74 Iowa, 528; Mulligan v. People, 5 Park, 105; People v. Morehouse, 25 N. Y. St. 294; Blige v. State, 20 Fla. 742, 51 Am. Rep. 628; Trevino v. State, 27 Tex. App. 372; Lacefield v. State, 34 Ark. 275, 36 Am.

Rep. 8; Dunaway v. People, 110 Ill. 333, 51 Am. Rep. 686; McGehee v. State, 62 Miss. 772, 52 Am. Rep. 209; Chapman v. State, 78 Ala. 463, 56 Am. Rep. 42; State v. Taylor, 20 Kan. 643; State v. Sears, 86 Mo. 169.

§ 241. Punishment for assault in first degree.

Assault in the first degree is punishable by imprisonment for a term not exceeding ten years.

Derivation: Penal Code, § 220, as amended L. 1892, ch. 662, § 6.

People v. O'Connell (1891), 60 Hun, 109, 14 N. Y. Supp. 485; People ex rel. Gately v. Lage (1896), 17 Misc. 713, 41 N. Y. Supp. 531; People v. Huson (1907), 187 N. Y. 100.

§ 242. Assault in second degree.

A person who, under circumstances not amounting to the crime specified in section two hundred and forty,

1. With intent to injure, unlawfully administers to, or causes to be administered to, or taken by another, poison, or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or,

2. With intent thereby to enable or assist himself or any other person to commit any crime, administers to or causes to be administered to, or taken by another, chloroform, ether, laudanum, or any other intoxicating narcotic or anæsthetic agent; or,

3. Wilfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or,

4. Wilfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or,

5. Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person,

Is guilty of assault in the second degree.

Derivation: Penal Code, § 218, as amended L. 1882, ch. 384, § 1.

People v. Baker (1882), 89 N. Y. 460; People v. Irving (1883), 2 N. Y. Cr. 47, 31 Hun, 615; People v. Cole (1883), 2 N. Y. Cr. 108; People v. Hall (1883), 2 N. Y. Cr. 134; People v. Cooper (1884), 3 N. Y. Cr. 117; People v. Sullivan (1885), 4 N. Y. Cr. 193, 199; People v. Clark (1885), 3 N. Y. Cr. 280; People v. Sweeney (1886), 41 Hun, 332, 4 N. Y. Cr. 283; People v. Shanley (1886), 40 Hun, 477, 4 N. Y. Cr. 472; People v. Moore (1888), 50 Hun, 356, 3 N. Y. Supp. 159; People v. Connor (1889), 53 Hun, 353, 6 N. Y. Supp. 220, 7 N. Y. Cr. 468; People v. Ryan (1889), 55 Hun, 214, 8 N. Y. Supp. 214, 7 N. Y. Cr. 448; People v. Murray (1889), 54 Hun, 406, 7 N. Y. Supp. 548;

People v. Barber (1893), 74 Hun, 368, 26 N. Y. Supp. 417; People v. Hannigan (1899), 42 App. Div. 617, 58 N. Y. Supp. 703, 14 N. Y. Cr. 144; People v. Garner (1901), 64 App. Div. 410, 72 N. Y. Supp. 66, aff'd 165 N. Y. 585; People v. Dankberg (1904), 91 App. Div. 67, 86 N. Y. Supp. 423; People v. Huter (1906), 184 N. Y. 242, 20 N. Y. Cr. 41; People v. Randazzo (1908), 127 App. Div. 825; see also Codd v. Cabe, 1 Exch. Div. 352, 18 Eng. Rep. 353-358 note; Hays v. People, 1 Hill, 361; Queen v. Riley, 18 Q. B. Div. 481, 38 Eng. Rep. 537; People v. Kirwan, 22 N. Y. Supp. 160; People v. Aldrich, 11 N. Y. Supp. 464; Simpson v. State, 59 Ala. 1, 31 Am. Rep. 1; People v. McKenzie, 6 App. Div. 199; Queen v. Clarence, 22 Q. B. Div. 23; People v. Cavanaugh, 62 How. Pr. 187; People v. Stacy, 104 N. Y. Supp. 616.

§ 243. Punishment for assault in second degree.

Assault in the second degree is punishable by imprisonment in a penitentiary or state prison for a term not exceeding five years, or by a fine of not more than one thousand dollars, or both.

Derivation: Penal Code, § 221, as amended L. 1892, ch. 662, § 7.

People v. Sweeney (1886), 41 Hun, 340, 4 N. Y. Cr. 283; People ex rel. Gately v. Lage (1897), 13 App. Div. 136, 12 N. Y. Cr. 200, rev'g 17 Misc. 712, 43 N. Y. Supp. 372; People v. Stock (1898), 26 App. Div. 567, 50 N. Y. Supp. 483; People ex rel. Schali v. Deyo (1905), 181 N. Y. 425, 19 N. Y. Cr. 441, rev'g 103 App. Div. 126, 127, 93 N. Y. Supp. 80, 19 N. Y. Cr. 440; People v. Stacy (1907), 119 App. Div. 743, 747, 104 N. Y. Supp. 615, 21 N. Y. Cr. 220; see also People v. Terrell, 11 N. Y. Supp. 365; People v. Hale (1883), 18 Week. Dig. 213, 1 N. Y. Cr. 533.

§ 244. Assault in third degree.

A person who commits an assault, or an assault and battery, not such as is specified in sections two hundred and forty and two hundred and forty-two, is guilty of assault in the third degree.

Derivation: Penal Code, § 219.

Corning v. Corning (1851), 6 N. Y. 97; Hays v. People (1865), 1 Hill, 351, cited in People v. Bransbey, 32 N. Y. 525; Slattery v. People (1874), 1 Hun, 311; People v. Court of Special Sessions (1879), 18 Hun, 330; People v. Person (1884), 2 N. Y. Cr. 114; Matter of Gray (1884), 2 N. Y. Cr. 302, 307; People v. Maschke (1884), 2 N. Y. Cr. 168; People v. Moore (1888), 50 Hun, 356, 3 N. Y. Supp. 159; People v. Drake (1892), 10 N. Y. Cr. 31, 47 N. Y. St. 783, 20 N. Y. Supp. 228; People v. Parker (1893), 69 Hun, 130, 23 N. Y. Supp. 704; People v. Bracco (1893), 69 Hun, 206, 23 N. Y. Supp. 505; People v. Curren (1896), 2 App. Div. 307, 37 N. Y. Supp. 803; People v. Kastner (1905), 101 App. Div. 265, 91 N. Y. Supp. 1004, 19 N. Y. Cr. 57; Matter of Bartholomew (1905), 106 App. Div. 371, 373, 374, 94 N. Y. Supp. 512; People v. Jacobs (1906), 51 Misc. 73, 100 N. Y. Supp. 734; People ex rel. Bidwell v. Pitts (1906), 111 App. Div. 320, 97 N. Y. Supp. 511; People v. Stacy (1907), 119 App. Div. 743, 104 N. Y. Supp. 615, 21 N. Y. Cr. 220; People ex rel. Gow v. Bingham (1907), 57 Misc. 75, 107 N. Y. Supp. 1011, 21 N. Y.

Cr. 568; see also Coward v. Baddeley, 28 L. J. Exch. 261; Matter of Bray, 12 N. Y. Supp. 367, 34 N. Y. St. 642; Rawlings v. Sill, 3 M. & W. 28; The Queen v. Lock, L. R. 2 Cr. Cas. Res. 10, 4 Eng. Rep. 512; Reg. v. Wollaston, 12 Cox C. C. 180, 2 Eng. Rep. 234; Rex v. Cockburn, 3 Cox C. C. 543; Rex v. Case, 4 Cox C. C. 220; Rex v. McGavarun, 6 Cox C. C. 64; People v. Lee, 1 Wheel. Cr. Cas. 364; Kirkland v. State, 43 Ind. 146, 13 Am. Rep. 386; Clark v. Downing, 55 Vt. 259, 45 Am. Rep. 612; Goodwin's Case, 6 City Hall Rec. 9; Faime's Case, 5 City Hall Rec. 95; People v. Powers, 1 Wheel. Cr. Cas. 405; Spence v. Duffy, 1 City Hall Rec. 39; Com. v. Hagenlock, 140 Mass. 125; Gray v. State, 63 Ala. 66, 73; Smith v. State, 39 Miss. 521, 525; People v. Yslas, 27 Cal. 630; Clark v. Downing, 55 Vt. 259, 45 Am. Rep. 612.

§ 245. Punishment for assault in third degree.

Assault in the third degree is punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or both.

Derivation: Penal Code, § 222.

People ex rel. Devoe v. Kelly (1884), 97 N. Y. 212, 2 N. Y. Cr. 428, 32 Hun, 540; People v. Stacy (1907), 119 App. Div. 743, 748, 104 N. Y. Supp. 615, 21 N. Y. Cr. 220; see also People v. Sutton, 6 N. Y. Supp. 95; Matter of Bray, 12 N. Y. Supp. 367.

§ 246. Use of force not unlawful in certain cases.

To use or attempt, or offer to use, force or violence upon or towards the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of a legal duty; or by any other person assisting him or acting by his direction;

2. When necessarily committed by any person in arresting one who has committed a felony, and delivering him to a public officer competent to receive him in custody;

3. When committed either by the party about to be injured or by another person in his aid or defense, in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his lawful possession, if the force or violence used is not more than sufficient to prevent such offense;

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master, or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, and the force or violence used is reasonable in manner and moderate in degree;

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from a carriage, railway car, vessel or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force or violence used is not more than sufficient to expel the offending passenger, with a reasonable regard to his personal safety;

6. When committed by any person in preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or in enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

Derivation: Penal Code, § 223.

Shorter v. People (1849), 2 N. Y. 193; People v. Sullivan (1852), 7 N. Y. 396; Hibbard v. N. Y., etc. (1857), 15 N. Y. 455; Sanford v. Eighth Ave. R. Co. (1861), 23 N. Y. 343; Higgins v. Watervliet, etc., Co. (1871), 46 N. Y. 23; Ruloff v. People (1871), 45 N. Y. 213, 5 Lans. 261, 11 Abb. (N. S.) 245; People v. Evers (1875), 63 N. Y. 625, 3 Hun, 716; Pease v. Railroad Co. (1885), 101 N. Y. 370-371, rev'g 11 Daly, 350; People v. O'Connor (1903), 82 App. Div. 55, 81 N. Y. Supp. 555; People v. Gaimari (1903), 176 N. Y. 96; People v. Dankberg (1904), 91 App. Div. 67, 86 N. Y. Supp. 423; People v. Dinser (1905), 49 Misc. 82, 84, 98 N. Y. Supp. 314; Magar v. Hammond (1906), 183 N. Y. 387, 390; see also Harrington v. People, 6 Barb. 607; Hagar v. Danforth, 20 Barb. 16; Star v. Liftchild, 40 Barb. 541; Carey v. People, 45 Barb. 262; Patterson v. People, 46 Barb. 625; Gyre v. Culver, 47 Barb. 592; People v. Lamb, 54 Barb. 342, 2 Keyes, 360; People v. Austin, 1 Park, 154; People v. Gibson, 3 Park, 234; People v. Adler, 3 Park, 249; People v. Cole, 4 Park, 35; Conraddy v. People, 5 Park, 234; People v. Wolven, 7 N. Y. Leg. Obs. 89; Hernandez v. Carnobeli, 10 How. Pr. 433, 4 Duer, 642; People v. Gulick, Hill & Den. Supp. 229, Lalor, 229; Morris Case, 1 City Hall Rec. 52; Priest v. Railroad Co., 110 Abb. (N. S.) 60, 40 How. 456; People v. Bush, 1 Wheel. Cr. Cas. 137, 138, note; People v. McArdle, 1 Wheel. Cr. Cas. 101; People v. Phillips, 1 Wheel. Cr. Cas. 155; People v. Sniffen, 1 Wheel. Cr. Cas. 512; Com. v. Max, 8 Phila. 422; Reneau v. State, 2 Lea, 720; Com. v. Ruggles, 6 Allen, 588; Golden v. State, 1 Rich. (N. S.) 292; Com. v. Randall, 4 Gray, 36; Cooper v. State, 8 Baxt. 324, 35 Am. Rep. 704; State v. Pendergrass, 2 Dev. & Batt. 365; Clements v. State, 60 Ala. 117; State v. Hull, 34 Conn. 132; Van Vactor v. State, 113 Ind. 276; State v. Mizner, 45 Iowa, 248, 24 Am. Rep. 769; Deskins v. Gose, 85 Mo. 485, 55 Am. Rep. 387; Anderson v. State, 3 Head (Tenn.), 455; Hutton v. State, 23 Tex. Ct. App. 386; Snowden v. State, 12 Tex. Ct. App. 105, 41 Am. Rep. 667; Lander v. Seaver, 32 Vt. 114, 76 Am. Dec. 163; State v. Burton, 45 Wis. 150, 18 Am. Law. Reg. (N. S.) 233, 238, note; Steamboat Co .v. Brockett, 121 U. S. 637.

ARTICLE 22.

ATTEMPT TO COMMIT CRIME.

SECTION 260. Attempt to commit crime.
261. Punishment for attempt to commit crime.
262. Restrictions under preceding section.

§ 260. Attempt to commit crime.

A person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court, in its discretion, discharges the jury and directs the defendant to be tried for the crime itself.

Derivation: Penal Code, § 685.

Sullivan v. People (1882), 27 Hun, 38; Darrow v. Family Fund Society (1886), 42 Hun, 245, aff'd 116 N. Y. 537, 15 Am. St. 430; People v. Dartmore (1888), 48 Hun, 321, 2 N. Y. Supp. 310; People v. O'Connell (1891), 60 Hun, 109, 14 N. Y. Supp. 485; People v. Gardner (1894), 73 Hun, 66, 25 N. Y. Supp. 1072, mod'f'g 144 N. Y. 119; People v. Mills (1904), 91 App. Div. 331, 86 N. Y. Supp. 529, 18 N. Y. Cr. 127, aff'd 178 N. Y. 274.

§ 261. Punishment for attempt to commit crime.

A person who unsuccessfully attempts to commit a crime is indictable and punishable, unless otherwise specially prescribed by statute, as follows:

1. If the crime attempted is punishable by the death of the offender, or by imprisonment for life, the person convicted of the attempt is punishable by imprisonment for not more than twenty-five years.

2. In any other case, he is punishable by imprisonment for not more than half of the longest term, or by a fine not more than one-half of the largest sum prescribed upon a conviction for the commission of the offense attempted, or by both such fine and imprisonment.

Derivation: Penal Code, § 686, as amended L. 1902, ch. 116.

People v. Johnson (1888), 110 N. Y. 141; People v. Moran (1890), 123 N. Y. 254, rev'g 54 Hun, 279, 7 N. Y. Supp. 582; People v. Mosier (1902), 73 App. Div. 5, 9, 16 N. Y. Cr. 541, 76 N. Y. Supp. 65; People v. Mills (1904), 178 N. Y. 274, aff'g 91 App. Div. 331, 86 N. Y. Supp. 529, 18 N. Y. Cr. 127.

§ 262. Restrictions upon preceding section.

Section two hundred and sixty-one does not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Derivation: Penal Code, § 687.

ARTICLE 24.

ATTORNEYS.

SECTION 270. Practicing or appearing as attorney without being admitted and registered.
271. None but attorneys to practice in New York city.
272. Penalty for violation of last section.
273. Misconduct by attorneys.
274. Buying demands on which to bring an action.
275. Limitation of preceding section.
276. Application when party prosecutes in person or by a corporation.
277. Use of attorney's name by another.
278. Attorneys forbidden to defend criminal prosecutions carried on by their partners, or formerly by themselves.
279. Attorneys may defend themselves.
280. Corporations and voluntary associations not to practice law.

§ 270. Practicing or appearing as attorney without being admitted and registered.

It shall be unlawful for any person to practice or appear as an attorney-at-law or as attorney and counselor-at-law for another in a court of record in this state or in any court in the county of New York or in the county of Kings, or to make it a business to practice as an attorney-at-law or as an attorney and counselor-at-law for another in any of said courts, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law, or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person, has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, or, in case of persons licensed and admitted prior to July first, eighteen hundred and forty-seven, without having first been duly and regularly licensed and admitted to practice as attorney of or in the then supreme court or as solicitor in chancery or of the court of chancery, and without having taken the constitu-

tional oath and without having subscribed and taken the oath or affirmation required by section four hundred and sixty-eight of the judiciary law and filed the same in the office of the clerk of the court of appeals as required by said section. Any person violating the provisions of this section is guilty of a misdemeanor and it shall be the duty of the district attorneys to enforce the provisions of this section and to prosecute all violations thereof.

Derivation: L. 1898, ch. 165, § 4, as amended L. 1899, ch. 225, § 2.

§ 271. None but attorneys to practice in cities of the first or second class.

A person shall not ask or receive, directly or indirectly, compensation for appearing as attorney in a court or before any magistrate in any city of the first or second class, or make it a business to practice as an attorney in a court or before a magistrate in any city of the first or second class, unless he has been regularly admitted to practice, as an attorney or counselor, in the courts of record of the state, but nothing in this act shall be held to apply to officers of societies for the prevention of cruelty, duly appointed, when exercising the special powers conferred upon such corporations under article six of the membership corporations law. (Amended by L. 1910, ch. 327, in effect Sept. 1, 1910.)

Derivation: Code Civil Procedure, § 63.

People v. Parr (1886), 42 Hun, 313; Braplan v. Berman (1902), 37 Misc. 502, 75 N. Y. Supp. 1002; Matter of Bolte (1904), 97 App. Div. 554, 572, 90 N. Y. Supp. 499; Burr v. Walter (1905), 104 App. Div. 46, 93 N. Y. Supp. 311; Matter of Kaffenburgh (1906), 115 App. Div. 848, 101 N. Y. Supp. 507; Tynan v. Mart (1907), 53 Misc. 50, 103 N. Y. Supp. 1083; see also 75 N. Y. Supp. 1002, 58 How. 313, 9 Daly, 102.

§ 272. Penalty for violation of last section.

A person who violates the last section is guilty of a misdemeanor, and shall be punished by imprisonment in the county jail, not exceeding one month, or by a fine of not less than one hundred dollars or more than two hundred and fifty dollars, or by both such fine and imprisonment.

But this and the last section do not apply to a case where a person appears in a cause to which he is a party.

Derivation: Code Civil Proc., § 64 in part. For remainder of said section, see § 1877, *post*.

People ex rel. Laughlin v. Finn (1881), 26 Hun, 58; Garvey v. Owens (1885), 37 Misc. 502; Ellenstein v. Klee (1895), 12 Misc. 113, 33 N. Y. Supp. 94; Matter of Bolte (1904), 97 App. Div. 572, 90 N. Y. Supp. 499; Matter of Kaffenburgh (1906), 115 App. Div. 849, 101 N. Y. Supp. 507; see also 75 N. Y. Supp. 1002.

§ 273. Misconduct by attorneys.

An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Wilfully delays his client's suit with a view to his own gain; or, wilfully receives any money or allowance for or on account of any money which he has not laid out, or become answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by this chapter, he forfeits to the party injured treble damages, to be recovered in a civil action.

Derivation: Penal Code, § 148; Code of Civil Proc., §§ 70-71.

Looff v. Lawton (1878), 14 Hun, 588; People v. Reavey (1886), 38 Hun, 418, 39 Hun, 364, 4 N. Y. Cr. 1; People v. Oishei (1897), 20 Misc. 163, 12 N. Y. Cr. 362, 45 N. Y. Supp. 49; People v. Hummell (1906), 49 Misc. 137, 119 App. Div. 153, 98 N. Y. Supp. 713, 20 N. Y. Cr. 240; Matter of Manheim (1906), 113 App. Div. 137, 99 N. Y. Supp. 87; see also Nevens Case, 5 City Hall Rec. 79.

§ 274. Buying demands on which to bring an action.

An attorney or counselor shall not:

1. Directly or indirectly, buy, or be in any manner interested in buying, a bond, promissory note, bill of exchange, book debt, or other thing in action, with the intent and for the purpose of bringing an action thereon.

2. By himself, or by or in the name of another person, either before or after action brought, promise or give, or procure to be promised or given, a valuable consideration to any person, as an inducement to placing, or in consideration of having placed, in his hands, or in the hands of another person, a demand of any kind, for the purpose of bringing an action thereon, or of representing the claimant in the pursuit of any civil remedy for the recovery thereof. But this subdivision does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

3. An attorney or counselor convicted of a violation of any of the provisions of this section, in addition to the punishment by fine and imprisonment prescribed therefor by this section, forfeits his office.

4. An attorney or counselor, who violates either of the first two subdivisions of this section, is guilty of a misdemeanor; and, on conviction thereof, shall be punished accordingly, and must be removed from office by the supreme court.

Derivation: Subd. 1. Penal Code, § 136, Code Civil Procedure, § 73.

Subd. 2. Code Civil Procedure, § 74. Subd. 3. Penal Code, § 139, Code Civil Procedure, § 75.

Subd. 1.—Coughlin v. Railroad Co. (1877), 71 N. Y. 443, rev'g 8 Hun, 136; Moses v. McDivitt (1882), 88 N. Y. 62, 2 Abb. N. C. 47; Wetmore v. Heggeman (1882), 88 N. Y. 73; Browning v. Marvin (1885), 100 N. Y. 144; Fay v. Hebbard (1886), 42 Hun, 490, 492; Fowler v. Callan (1886), 102 N. Y. 395, rev'g 12 Daly, 263, 4 Civ. Proc. 413; Blashfield v. Empire State Tel. Co. (1895), 147 N. Y. 520, 529, rev'g 71 Hun, 532, 24 N. Y. Supp. 1006; Browne v. West (1896), 9 App. Div. 135, 138, 41 N. Y. Supp. 146; Maxon v. Cain (1897), 22 App. Div. 270, 47 N. Y. Supp. 855; Carpenter v. Cummings (1897), 20 Misc. 661, 46 N. Y. Supp. 252; Tilden v. Aitkin (1899), 37 App. Div. 28, 55 N. Y. Supp. 735; DeForest v. Andrews (1899), 27 Misc. 145, 147, 58 N. Y. Supp. 358; Gilroy v. Badger (1899), 27 Misc. 640, 58 N. Y. Supp. 392, rev'g on other grounds 28 Misc. 143, 58 N. Y. Supp. 1106; Epstein v. U. S. Fidelity Co. (1899), 29 Misc. 295, 299, 60 N. Y. Supp. 527; Stedwell v. Hartmann (1902), 74 App. Div. 126, 77 N. Y. Supp. 498, aff'd 173 N. Y. 624; Irwin v. Curie (1902), 171 N. Y. 411, rev'g 56 App. Div. 514, 67 N. Y. Supp. 380; Matter of Fitzsimons (1903), 174 N. Y. 15, rev'g 77 App. Div. 345, 79 N. Y. Supp. 194; Thompson v. Stiles (1904), 44 Misc. 334, 89 N. Y. Supp. 876; Matter of Clark (1906), 184 N. Y. 229, 108 App. Div. 150, 95 N. Y. Supp. 388; Matter of Manheim (1906), 113 App. Div. 137, 99 N. Y. Supp. 87; see also Baldwin v. Latson, 2 Barb. Ch. 306; Warner v. Paine, 3 Barb. Ch. 530; Hall v. Bartlett, 9 Barb. 297; Voorhees v. Dorr, 51 Barb. 587; Ramsey v. Gould, 57 Barb. 396; Van Rensselaer v. Sheriff of Onondaga, 1 Cow. 443; Williams v. Matthews, 3 Cow. 252; Hoag v. Weston, 10 Civ. Proc. 95; West v. Kurtz, 15 Civ. Proc. 426; Marsh v. Holbrook, 3 Abb. Dec. 176; Ramsey v. E. R. R. Co., 8 Abb. Pr. (N. S.) 17; Warren v. Helmer, 8 How. Pr. 421; Brotherson v. Consalus, 26 How. Pr. 213; Mann v. Fairchilds, 2 Keyes, 106, 14 Barb. 548; Hall v. Gird, 7 Hill, 586; Ely v. Cook, 2 Abb. Dec. 14; Barry v. Whitney, 3 Sandf. 696; Arden v. Patterson, 5 Johns. Ch. 44; Bristol v. Dann, 12 Wend. 142; The Carl Jackson, 29 Fed. 396, 4 Civ. Proc. 414, note; Brotherson v. Consalus, 26 How. Pr. 213; Goodell v. People, 5 Park Cr. 206; Gescheidt v. Quirk, 5 Civ. Pro. 38.

Subd. 2.—Coughlin v. N. Y. C. & H. E. E. E. Co. (1877), 71 N. Y. 443, rev'g 8 Hun, 136; Fowler v. Callan (1886), 102 N. Y. 395, 399, rev'g 12 Daly, 263, 4 Civ. Pro. 413; Hirschbach v. Ketchum (1896), 5 App. Div. 324, 39 N. Y. Supp. 291; Hirschbach v. Ketchum (1902), 72 App. Div. 79, 76 N. Y. Supp. 117; s. c., 84 App. Div. 258, 82 N. Y. Supp. 739, aff'd 177 N. Y. 582; Stedwell v. Hartmann (1902), 74 App. Div. 126, 77 N. Y. Supp. 498, aff'd 173 N. Y. 624; Irwin v. Currie (1902), 171 N. Y. 409, rev'g 56 App. Div. 514, 67 N. Y. Supp. 380; Matter of Fitzsimons (1903), 174 N. Y. 15, rev'g 77 App. Div. 345, 79 N. Y. Supp. 194; Beers v. Washbond (1903), 86 App. Div. 582, 83 N. Y. Supp. 993; see also Blashfield v. Empire State Tel. & Tel. Co., 18 N. Y. Supp. 250, 254; Marsh v. Holbrook, 3 Abb. Dec. 176; Ely v. Cooke, 2 Abb. Dec. 14.

Subd. 3.—Hess v. Allen (1898), 24 Misc. 393, 53 N. Y. Supp. 413.

§ 275. Limitation of preceding section.

The last section does not prohibit the receipt, by an attorney or

counselor, of a bond, promissory note, bill of exchange, book debt, or other thing in action, in payment for property sold, or for services actually rendered, or for a debt antecedently contracted; or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance, and without intent to violate that section.

Derivation: Penal Code, § 140; Code Civil Procedure, § 76.

Epstein v. U. S. Fidelity & Guaranty Co. (1899), 29 Misc. 299, 60 N. Y. Supp. 527; Baldwin v. Latson, 2 Barb. 206; Ramsey v. Gould, 57 Barb. 398; People v. Walbridge, 3 Wend. 120; Watson v. McLaren, 19 Wend. 557; Mann v. Fairchild, 2 Keyes, 106; Goodell v. People, 5 Park, 206, 6 N. Y. Supp. 527, 97 N. Y. Supp. 201.

§ 276. Application when party prosecutes in person or by a corporation.

The last two sections apply to a person prosecuting an action in person and to a corporation engaged in the business of conducting litigation and providing counsel therefor, who or which does an act which an attorney or counselor is therein forbidden to do.

Derivation: Code Civil Procedure, § 77.

Benedict et al. v. Guardian Trust Co. (1904), 91 App. Div. 108, 86 N. Y. Supp. 370.

§ 277. Use of attorney's name by another.

If an attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by this section, such attorney, and every person who shall so use his name, is guilty of a misdemeanor.

Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers, or municipal corporation, on behalf of another party, the attorney-general, or district attorney, or attorney of such public officer or board or corporation may permit any proceeding therein, to be taken in his name by an attorney to be chosen by the party in interest.

Derivation: Penal Code, §§ 149-150.

Matter of Manheim (1906), 113 App. Div. 137, 99 N. Y. Supp. 87; York v. Peck, 31 Barb. 350.

§ 278. Attorneys forbidden to defend criminal prosecutions carried on by their partners, or formerly by themselves.

An attorney, who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by a person as district attorney or other public prosecutor, with whom such attorney is directly or indirectly connected as a partner; or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court, as district attorney or other public prosecutor, afterwards directly or indirectly advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise; or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor, and on conviction thereof, shall be punishhed accordingly, and must be removed from office by the supreme court.

Derivation: Penal Code, § 670; Code Civil Procedure, §§ 78-80.

Matter of Manheim (1906), 113 App. Div. 137, 99 N. Y. Supp. 87; Ruser v. Union Distillery Co. (1893), 4 Misc. 268, 24 N. Y. Supp. 101.

§ 279. Attorneys may defend themselves.

The last section does not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

Derivation: Penal Code, § 671; Code Civil Procedure, § 81.

Matter of Manheim (1906), 113 App. Div. 137, 99 N. Y. Supp. 87.

§ 280. Corporations and voluntary associations not to practice law.

It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself, in any of said courts or to hold itself out to the public as being entitled to practice law, or to render or furnish legal services or advice, or to furnish attorneys or counsel or to render legal services of any kind in actions or

proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law, or to furnish legal advice, services or counsel, or to advertise that either alone or together with or by or through any person, whether a duly and regularly admitted attorney-at-law, or not, it has, owns, conducts or maintains a law office or an office for the practice of law, or for furnishing legal advice, services or counsel. It shall be unlawful further for any corporation or voluntary association to solicit itself or by or through its officers, agents or employees any claim or demand for the purpose of bringing an action thereon or of representing as attorney-at-law, or for furnishing legal advice, services or counsel to, a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has been or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil remedy. Any corporation or voluntary association violating the provisions of this section shall be liable to a fine of not more than five thousand dollars and every officer, trustee, director, agent or employee of such corporation or voluntary association who directly or indirectly engages in any of the acts herein prohibited or assists such corporation or voluntary association to do such prohibited acts is guilty of a misdemeanor. The fact that any such officer, trustee, director, agent or employee shall be a duly and regularly admitted attorney-at-law, shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section. This section shall not apply to any corporation or voluntary association lawfully engaged in a business authorized by the provisions of any existing statute, nor to a corporation or voluntary association lawfully engaged in the examination and insuring of titles to real property, nor shall it prohibit a corporation or vountary association from employing an attorney or attorneys in and about its own

immediate affairs or in any litigation to which it is or may be a party, nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existence, organization or incorporation may be approved by the appellate division of the supreme court of the department in which the principal office of said corporation or voluntary association may be located. (Added by L. 1909, ch. 483. Am'd by L. 1911, ch. 317, in effect Sept. 1, 1911.)

ARTICLE 26.

BANKING.

SECTION 290. Misconduct of officers, directors, trustees, or employees of banking corporations.
291. Sale or hypothecation of bank notes by officer.
292. Officer of bank putting excessive number of its notes in circulation.
293. Officer or agent of banking corporation making guaranty or indorsement, in its behalf, beyond the legal limit.
294. Bank officer overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts.
295. Receiving deposits in insolvent bank.
296. Unlawful investments by officers of savings banks.
297. Misconduct by directors of moneyed corporations.
298. Misconduct by banks and bankers.
299. Unlawful discount of bills of foreign banks.
300. Misconduct by officers of banking department.
301. Using dies and plates of extinct state bank.
302. Unauthorized use of the term "bank."

§ 290. Misconduct of officers, directors, trustees, or employees of banking corporations.

A director of a corporation, organized under the laws of this state, having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended to make a loan or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed by statute; or,

Any director, trustee, officer or employee of any corporation to which the banking law is applicable who makes or maintains, or attempts to make or maintain, a deposit of such corporation's funds with any other corporation on condition, or with the understanding, express or implied, that the corporation receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer or employee of the corporation so making or maintraining or attempting to make or maintain such deposit; or,

Any officer or employee of any corporation to which the banking law is applicable who intentionally conceals from the directors or trustees of such corporation any discounts or loans made by it

between the regular meetings of its board of directors or trustees, or the purchase of any securities or the sale of any of its securities during the same period, or knowingly fails to report to its board of directors or trustees when required to do so by law, all discounts or loans made by it and all securities purchased or sold by it between the regular meetings of its board of directors or trustees; or,

Any director, officer or employee of a bank or trust company who makes any agreement, express or implied, before or at the time of issuing a certificate of deposit, by which its holder may demand or receive payment thereof in advance of its maturity,

Is guilty of a misdemeanor.

Nothing in this section shall render any loan made by the directors of any such corporation, in violation thereof, invalid. (Amended by L. 1910, ch. 398, in effect June 6, 1910.)

Derivation: Penal Code, § 595, as amended L. 1908, chs. 133, 157; Penal Code, § 596.

§ 291. Sale or hypothecation of bank notes by officer.

An officer or agent of any corporation having banking powers, who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes, as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

Derivation: Penal Code, § 597.

Matter of Sayles (1903), 40 Misc. 135, 17 N. Y. Cr. 234, 81 N. Y. Supp. 258.

§ 292. Officer of bank putting excessive number of its notes in circulation.

An officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation to an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

Derivation: Penal Code, § 598.

§ 293. Officer or agent of banking corporation making guaranty or indorsement, in its behalf, beyond the legal limit.

An officer or agent of any banking corporation, who makes or delivers any guaranty or indorsement on behalf of such corporation, whereby it may become liable on any of its discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

Derivation: Penal Code, § 599.

§ 294. Bank officer overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts.

An officer, director, agent, teller, clerk or employee of any bank, banking association, savings bank or trust company, who:

1. Knowingly overdraws his account with such bank, banking association, savings bank or trust company, and thereby obtains the money, notes or funds of any such bank, banking association, savings bank or trust company; or,

2. Asks or receives, or consents or agrees to receive, any commission, emolument, gratuity or reward, or any promise of any commission, emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, for procuring or endeavoring to procure for any person, firm or coporation, any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange, by any such bank, banking association, savings bank or trust company, or for permitting any person, firm or corporation to overdraw any account with such bank, banking association, savings bank or trust company,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 600, as amended L. 1905, ch. 248, § 1.

People v. Upton (1885), 38 Hun, 107, 4 N. Y. Cr. 455; People v. O'Donnell (1887), 46 Hun, 360, 7 N. Y. Cr. 347; People v. Clements (1886), 5 N. Y. Cr. 197, 277, 42 Hun, 286.

§ 295. Receiving deposits in insolvent bank.

An officer, agent, teller or clerk of any bank, banking association or savings bank, and every individual banker or agent, and every private banker or agent and any teller or clerk of an individual banker, or of a private banker who receives any deposit, knowing that such bank or association or banker is insolvent, is guilty of a

misdemeanor, if the amount or value of such deposit be less than twenty-five dollars; if the amount or value of such deposit be twenty-five dollars or over, such person shall be guilty of a felony, punishable by imprisonment for not less than one nor more than five years, or by a fine of not less than five hundred nor more than three thousand dollars, or by both.

Derivation: Penal Code, § 601, as amended L. 1902, ch. 148.

People v. Moore (1885), 3 N. Y. Cr. 458; Cragie v. Hadley (1885), 99 N. Y. 132, aff'g 14 Abb. N. C. 409; Atkinson v. Rochester Printing Co. (1889), 114 N. Y. 168, aff'g 43 Hun, 167; Stapleton v. Odell (1897), 21 Misc. 94, 47 N. Y. Supp. 13; Hall v. Baker (1901), 66 App. Div. 135, 72 N. Y. Supp. 965.

§ 296. Unlawful investments by officers of savings banks.

Any officer or trustee of a savings bank authorizing or making any investment of the funds of the bank in securities, not authorized by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 602, as amended L. 1892, ch. 662, § 21, and ch. 692, § 1.

People v. Severance (1893), 67 Hun, 182, 22 N. Y. Supp. 91.

§ 297. Misconduct by directors of moneyed corporations.

Every director of a moneyed corporation who:

1. In case of the fraudulent insolvency of such corporation, shall have participated in such fraud; or,

2. Wilfully does any act as such director which is expressly forbidden by law, or wilfully omits to perform any duty imposed upon him as such director by law,

Is guilty of a misdemeanor, if no other punishment is prescribed therefor by law.

The insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear upon investigation to have been administered fairly, legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

Derivation: Penal Code, § 603, as amended L. 1892, ch. 692, § 1.

People v. Clements (1886), 5 N. Y. Cr. 277, 42 Hun, 286; People v. Georger (1905), 109 App. Div. 111, 112, 95 N. Y. Supp. 790.

§ 298. Misconduct by banks and bankers.

Any moneyed corporation or individual banker authorized to carry on the business of banking under the laws of this state who:

1. Receives, pays out, gives or offers in payment as money to

circulate, or who attempts to circulate as money, any bill, note or other evidence of debt issued or purporting to have been issued by any corporation or individual, situated or residing without this state, and which bill, note or other evidence of debt shall, upon any part thereof, purport to be payable or redeemable at any place or by any corporation or individual within this state; or,

2. Issues, utters or circulates, as money, or in any way, directly or indirectly, aids or assists in the issuing, uttering or circulating as money within this state, of any bank bill, note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual situated or residing without this state; or procures or receives, in any manner whatever, any such bank bill, note or other evidence of debt with intent to issue, utter or circulate, or with intent to aid in issuing, uttering or circulating the same as money within this state; or,

3. Directly or indirectly lends or pays out for paper discounted or purchased any bank bill, note or other evidence of debt, which is not received at par by such corporation or banker for debts due such corporation or banker; or,

4. Issues or puts in circulation any bank bill or note of any such corporation or banker, unless the same shall be made payable on demand and without interest, except bills of exchange on foreign countries or places beyond the limits or jurisdiction of the United States, and except certificates of deposit payable on presentation, with or without interest, to bearer or to the order of a person named therein, or certificates of deposit payable, with or without interest, to the order of a person named therein showing the amount of the deposit, the date of issue and the date when due; but such certificates shall not be issued except as representing money actually on deposit,

Is guilty of a misdemeanor.

Nothing in this section contained shall be construed to prohibit any such corporation or banker from receiving and paying out such foreign bank bills as they shall receive at par in the ordinary course of their business, or to prohibit such corporation or banker from receiving foreign notes from their dealers and customers in the regular and usual course of their business, at a rate of discount not exceeding that which is or shall be at the time fixed by law, for the redemption of the bills of the banks of this state at their agencies, or from obtaining from the corporations, associations or individuals by which such foreign notes are made, the payment or redemption thereof. (Amended by L. 1910, ch. 398, in effect June 6, 1910.)

Derivation: Penal Code, § 604, as amended L. 1892, ch. 692, § 1.

§ 299. Unlawful discount of bills of foreign banks.

Any person, association or corporation within the state who, *directly or indirectly*, on any pretense whatever, procures or re-

ceives or offers to receive from any corporation or person any bank bill or note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual, situated or residing without this state, at a greater rate of discount than is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, is guilty of a misdemeanor.

Derivation: Penal Code, § 605, as amended L. 1892, ch. 692, § 1.

§ 300. Misconduct by officers of banking department.

The superintendent of banks, or any officer in the banking department who countersigns bills or notes for any person or corporation exceeding the value of the interest bearing stocks of the state of New York or of the United States, or other securities deposited with such superintendent by such person or corporation on account thereof, is guilty of a felony, punishable by a fine of not less than five thousand dollars or by imprisonment for not less than five years, or by both.

Derivation: Penal Code, § 606, as amended L. 1892, ch. 692, § 1.

§ 301. Using dies and plates of extinct state bank.

Any person who uses the dies and plates of a state bank in the manufacture of notes and bills, after such bank has become a national bank in pursuance of law, is guilty of a misdemeanor.

Derivation: Penal Code, § 607, added L. 1892, ch. 692, § 1.

§ 302. Unauthorized use of term "bank."

Any person engaged in banking in this state, not subject to the supervision of the superintendent of banks, and not required by law to report to such superintendent, who was not engaged in such banking before May twenty-third, eighteen hundred and eighty-five, who:

1. Uses an office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 609, as amended L. 1892, ch. 692, § 1.

Hall v. Baker (1901), 66 App. Div. 131, 135, 72 N. Y. Supp. 965.

ARTICLE 28.

BARRATRY.

SECTION 320. Common barratry defined.
321. Barratry a misdemeanor.
322. Proof required to convict of barratry.
323. Interest no defense to prosecution for barratry.

§ 320. Common barratry defined.

Common barratry is the practice of exciting groundless judicial proceedings.

Derivation: Penal Code, § 132.

Com. v. Mohn, 52 Pa. St. 243; Voorhees v. Dorr, 51 Barb. 580, 581; Com. v. Tubbs, 1 Cush. 2; Com. v. McCullock, 15 Mass. 227; Com. v. Davis, 11 Pick. 432.

§ 321. Barratry a misdemeanor.

Common barratry is a misdemeanor.

Derivation: Penal Code, § 133.

§ 322. Proof required to convict of barratry.

No person can be convicted of common barratry, except upon proof that he has excited actions or legal proceedings, in at least three instances, and with a corrupt or malicious intent to vex and annoy.

Derivation: Penal Code, § 134.

Voorhees v. Dorr, 51 Barb. 580, 581.

§ 323. Interest no defense to prosecution for barratry.

Upon a prosecution for common barratry, the fact that the defendant was himself a party in interest or upon the record to any action or legal proceeling complained of, is not a defense.

Derivation: Penal Code, § 135.

ARTICLE 30.

BIGAMY.

SECTION 340. Definition and punishment of bigamy.
341. Exceptions.
342. In what county indictment for bigamy may be found; place of trial.
343. Punishment of consort.

§ 340. Definition and punishment of bigamy.

A person who, having a husband or wife living, marries another person, is guilty of bigamy and is punishable by imprisonment in a penitentiary or state prison for not more than five years.

Derivation: Penal Code, § 298.

Hayes v. People (1862), 25 N. Y. 390, 24 How. Pr. 452, 5 Park, 325, 15 Abb. 163; Van Voorhis v. Brintnall (1881), 86 N. Y. 18, 40 Am. Rep. 505, rev'g 23 Hun, 264; Thorp v. Thorp (1882), 90 N. Y. 602; People v. Chase (1882), 28 Hun, 310, 16 Week. Dig. 143; People v. Weed (1883), 29 Hun, 628, 1 N. Y. Cr. 349, aff'd 96 N. Y. 625; Moore v. Hegeman (1883), 92 N. Y. 521, 44 Am. Rep. 408, aff'g 27 Hun, 68; People v. Crawford (1891), 62 Hun, 160. 16 N. Y. Supp. 575, 10 N. Y. Cr. 59, aff'd 133 N. Y. 535; Price v. Price (1891), 124 N. Y. 589, rev'g 33 Hun, 76; see also Miles v. United States, 103 U. S. 304, 4 Lawson Defenses, 50, 23 Alb. L. J. 326; Holbrook v. State, 34 Ark. 511, 36 Am. Rep. 17; Dumas v. State, 14 Tex. Ct. App. 464, 46 Am. Rep. 241, 245; People v. Humphrey, 7 Johns. 314; Phelan's Case, 3 C. H. Rec. 91; People v. Wigham, 1 Wheel. Cr. Cas. 115; Phelan's Case, 6 C. H. Rec. 91; Coleman's Case, 6 C. H. Rec. 3; Steer's Case, 2 C. H. Rec. 111; Walworth's Case, 1 City Hall Rec. 171; People v. Brown, 34 Mich. 339, 22 Am. Rep. 531; People v. Merrill, 2 Park, 590; Johnson v. Com., 86 Ky. 122; People v. Mosher, 2 Park, 195.

§ 341. Exceptions.

The last section does not extend:

1. To a person whose former husband or wife, has been absent for five years successively then last past, without being known to him or her within that time to be living, and believed by him or her to be dead; or,

2. To a person whose former marriage has been pronounced void, or annulled, or dissolved, by the judgment of a court of competent jurisdiction, for a cause other than his or her adultry; or,

3. To a person who, being divorced for his or her adultry, has received from the court which pronouced the divorce, permission to marry again; or,

4. To a person whose former husband or wife has been sentenced to imprisonment for life.

Derivation: Penal Code, § 299.

Fordham v. Gouverneur Village (1896), 5 App. Div. 565, 39 N. Y. Supp. 396; Karstens v. Karstens (1898), 29 App. Div. 235 note, 45 N. Y. Supp. 966, 51 N. Y. Supp. 795; Czech v. Bean (1901), 35 Misc. 729, 72 N. Y. Supp. 402; Safford v. Safford, 31 Abb. N. C. 74.

Subd. 1.—People v. Meyer, 8 N. Y. St. 257; People v. Meyer, 10 N. Y. St. 257; People v. Teilen, 58 Cal. 218, 41 Am. Rep. 258; The Queen v. Folsom, 23 Q. B. Div. 168, 40 Alb. L. J. 250.

Subd. 2.—Fleming v. People (1863), 27 N. Y. 329, aff'g 5 Park, 353; Gallaghan v. People, 1 Park, 378; Baker v. People, 2 Hill, 325.

Subd. 3.—People v. Baker (1879), 76 N. Y. 78, 32 Am. Rep. 274, rev'g 15 Hun, 256; People v. Faber (1883), 1 N. Y. Cr. 115, 92 N. Y. 146, 44 Am. Rep. 357, rev'g 29 Hun, 320; People v. Hovey, 5 Barb. 117.

§ 342. In what county indictment for bigamy may be found; place of trial.

An indictment for bigamy may be found in the county in which the defendant is arrested, and the like proceedings, including the trial, judgment, and conviction, may be had in that county, as if the offense were committed therein.

Derivation: Penal Code, § 300.

King v. People (1875), 5 Hun, 297; Collins v. People, 4 Th. & C. 77.

§ 343. Punishment of consort.

A person who knowingly enters into a marriage with another, which is prohibited to the latter by the foregoing provisions of this article is punishable by imprisonment in a penitentiary or state prison, for not more than five years, or by a fine of not more than one thousand dollars, or both.

Derivation: Penal Code, § 301.

Sauser v. People (1876), 8 Hun, 302; Blake v. Everman (1890), 56 Hun, 454, 10 N. Y. Supp. 74; Hollister v. Valentine (1902), 69 App. Div. 588, 75 N. Y. Supp. 115.

ARTICLE 32.

BILLS OF LADING, RECEIPTS AND VOUCHERS.

SECTION 360. Fictitious bills of lading, receipts and vouchers.
361. Offenses by pipe-line corporations.
362. Erroneous bills of lading or receipts, issued in good faith, excepted.
363. Duplicate receipts must be marked "duplicate."
364. Selling, hypothecating or pledging property received for transportation or storage.
365. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.
366. Property demanded by process of law.
367. Penalty for failure to issue bill of lading.

§ 360. Fictitious bills of lading, receipts and vouchers.

A person who:

Being the master, owner or agent of any vessel, or officer or agent of any railway, express or transportation company, or otherwise being or representing any carrier, delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher,

Is guilty of a misdemeanor, punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Derivation: Penal Code, § 629, as amended L. 1892, ch. 692, § 1.

Mairs v. Railroad Co. (1902), 73 App. Div. 265, 273, 76 N. Y. Supp. 838, aff'd 175 N. Y. 409; First Nat. Bank v. Dean, 17 N. Y. Supp. 376, 27 Abb. N. C. 284.

§ 361. Offenses by pipe-line corporations.

A pipe-line corporation, or a person being the officer, agent, manager or representative thereof, who:

1. Accepts, makes or issues any receipt, certificate or order of any kind for any commodity, unless the commodity represented is actually at the time in the possession of the corporation; or,

2. Delivers to any person any petroleum or other commodity received for transportation by such corporation without the presentation and surrender of all vouchers, receipts, orders or certificates that have been issued or accepted for the same; or,

3. Having parted with the possession of any commodity and having received therefor an order, voucher, receipt or certificate, shall reissue the same, or shall not cause it to be cancelled by the word "cancelled" stamped or printed legibly across the face thereof, and to be filed and recorded by such corporation, as provided by law,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 628, as amended L. 1892, ch. 692, § 1.

§ **362. Erroneous bills of lading or receipts, issued in good faith, excepted.**

No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue.

Derivation: Penal Code, § 630.

§ **363. Duplicate receipts must be marked "duplicate."**

A person mentioned in sections three hundred and sixty and three hundred and sixty-one, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Derivation: Penal Code, § 631.

§ **364. Selling, hypothecating or pledging property received for transportation or storage.**

A person mentioned in sections three hundred and sixty and

three hundred and sixty-one, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Derivation: Penal Code, § 632.

§ 365. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.

A person mentioned in section three hundred and sixty, who delivers to another any merchandise for which a bill of lading, receipt or voucher has been issued, unless such receipt or voucher bears upon its face the words, "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Derivation: Penal Code, § 633.

Burnham v. Cape Vincent Seed Co. (1894), 142 N. Y. 169, aff'd 49 N. Y. S. R. 918, mem.; First Nat. Bk. v. N. Y., etc. (1895), 85 Hun, 160, 32 N. Y. Supp. 604; Nat. Com. Bk. v. Lack. Trans. Co. (1901), 59 App. Div. 270, 69 N. Y. Supp. 396; Mairs v. Railroad Co. (1903), 175 N. Y. 409, aff'g 73 App. Div. 265, 273, 76 N. Y. Supp. 838.

§ 366. Property demanded by process of law.

The last two sections do not apply to any case where property is demanded by virtue of legal process.

Derivation: Penal Code, § 634.

§ 367. Penalty for failure to issue bill of lading.

Any person who, being the owner, master or agent of any vessel transporting merchandise or property between ports of this state, departs with such vessel or causes such vessel to depart from the port where such merchandise or property is taken on board, without giving or tendering to the shipper of such merchandise or property, if a bill of lading be demanded by such shipper, a bill of lading or shipping document as provided by section three hundred and ninety-eight of the general business law, is guilty of a misdemeanor.

Derivation: Penal Code, § 634a, added L. 1898, ch. 156, § 1.

ARTICLE 34.

BRIBERY AND CORRUPTION.

SECTION 370. Definition of jurors.
371. Bribery of a judicial officer.
372. Officer accepting bribe.
373. Juror, arbitrator or referee promising verdict.
374. Juror or person authorized to hear or determine accepting bribes.
375. Liability of trial juror for taking gift or gratuity.
376. Embracery.
377. Liability of embraceor procuring trial juror to take gain or profit.
378. Bribing certain public officers.
379. Bribery of witnesses.
380. Bribery of labor representatives.
381. Offender a competent witness.

§ 370. Definition of jurors.

The word "juror" as used in this article includes a talesman, and extends to jurors in all courts, whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

Derivation: Penal Code, § 81.

§ 371. Bribery of a judicial officer.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a judicial officer, juror, referee, arbitrator, appraiser or assessor, or other person authorized by law to hear or determine any question, matter, case, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereupon, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Derivation: Penal Code, § 71.

People v. Jaehne (1886), 103 N. Y. 190, 4 N. Y. Cr. 478, aff'd 128 U. S. 189, 6 N. Y. Cr. 237; People v. Sharp (1887), 107 N. Y. 430, 5 N. Y. Cr. 572, rev'g 45 Hun, 460; People v. Winant (1898), 24 Misc. 361, 53 N. Y. Supp. 695; People v. Acritelli (1908), 57 Misc. 574, 589, 110 N. Y. Supp. 430; Klugman's Case, 49 How. Pr. 484; People v. Ah Fooh, 62 Cal. 493; see also State v. Ellis, 33 N. J. L. 102; State v. Carpenter, 20 Vt. 9.

§ 372. Officer accepting bribe.

A judicial officer, a person who executes any of the functions of a public office not designated in articles one hundred and twenty-four and one hundred and seventy and in section twenty-three hundred and twenty of this chapter, or a person employed by or acting for the state, or for any public officer in the business of the state, who asks, receives, or agrees to receive a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, judgment, action, decision or other official proceeding, shall be influenced thereby, or that he will do or omit any act or proceeding, or in any way neglect or violate any official duty, is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both. A conviction also forfeits any office held by the offender, and forever disqualifies him from holding any public office under the state.

Derivation: Penal Code, § 72.

People v. Jaehne (1886), 103 N. Y. 182, 4 N. Y. Cr. 478, 128 U. S. 189, 6 N. Y. Cr. 239; People v. Sharp (1887), 107 N. Y. 439, 5 N. Y. Cr. 572, rev'g 45 Hun, 460; People v. Willis (1898), 24 Misc. 537, 54 N. Y. Supp. 129, 13 N. Y. Cr. 343; People v. Bissert (1902), 71 App. Div. 118, 135, 75 N. Y. Supp. 630; People v. Jensen (1904), 99 App. Div. 355, 360, 90 N. Y. Supp. 1062, 19 N. Y. Cr. 7; People ex rel. Dickenson v. Van De Carr (1903), 87 App. Div. 386, 387, 84 N. Y. Supp. 461, 18 N. Y. Cr. 32, 33; People v. Acritelli (1908), 57 Misc. 574, 110 N. Y. Supp. 430; People v. Gibson (1908), 191 N. Y. 227, aff'g 122 App. Div. 69, 106 N. Y. Supp. 590, 21 N. Y. Cr. 425; People v. Jackson (1908), 191 N. Y. 293, 296, 121 App. Div. 858, 107 N. Y. Supp. 1141, rev'g 47 Misc. 60, 62, 95 N. Y. Supp. 286, 19 N. Y. Cr. 326; see also People v. Markham, 64 Cal. 157, 49 Am. Rep. 700.

§ 373. Juror, arbitrator or referee promising verdict.

A juror or a person drawn or summoned to attend as a juror, or a person chosen arbitrator, or appointed referee, who:

1. Makes any promise or agreement to give a verdict, judgment, report, award, or decision, for or against any party; or,

2. Wilfully receives any communication, book, paper instrument, or information, relating to a cause or matter pending before him, except according to the regular course of proceeding upon the trial or hearing of that cause or matter,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 73.

People ex rel. Munsell v. Oyer and Terminer (1885), 36 Hun, 277, 3 N. Y. Cr. 209, 101 N. Y. 245, 4 N. Y. Cr. 75.

§ **374. Juror or person authorized to hear or determine accepting bribes.**

A juror, referee, arbitrator, appraiser, or assessor, or other person authorized by law to hear or determine any question, matter, cause, controversy, or proceeding, who asks, receives, or agrees to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment or decision, shall be influenced thereby, is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both.

Derivation: Penal Code, § 74.

People v. Sharp (1887), 107 N. Y. 439, 5 N. Y. Cr. 572, rev'g 45 Hun, 460.

§ **375. Liability of trial juror for taking gift or gratuity.**

A person, drawn or notified to attend, as a trial juror, in an action, in a court of record, or not of record, or in a special proceeding before an officer, who takes any thing to render his verdict, or receives, from a party to the action or special proceeding, a gift or gratuity, forfeits ten times the sum, or ten times the value of that, which he took or received, to the party to the action or special proceeding, aggrieved thereby; and is also liable to that party, for his damages sustained thereby; besides being subject to the punishment, prescribed by law.

Derivation: Code Civil Procedure, § 1193.

§ **376. Embracery.**

A person who influences or attempts to influence improperly, a juror in a civil or criminal action or proceeding, or one drawn or summoned to attend as such a juror, or one chosen an arbitrator, or appointed a referee, in respect to his verdict, judgment, report, award or decision in any cause or matter pending, or about to be brought before him, in any case, or in any manner not included in sections three hundred and seventy-three or three hundred and seventy-four, is guilty of a misdemeanor.

Derivation: Penal Code, § 75.

People v. Sellick (1886), 4 N. Y. Cr. 329; People v. Glen (1902), 173 N. Y. 395, 397, 402, aff'g 64 App. Div. 167, 71 N. Y. Supp. 893; see also Turner v. Bearsley, 19 Wend. 348; Gibbs v. Dewey, 5 Cow. 503; State v. Sales, 3 Nev. 269.

§ 377. Liability of embraceor procuring trial juror to take gain or profit.

An embraceor, who procures a person, drawn or notified to attend, as a trial juror, to take gain or profit, contrary to section three hundred and seventy-five, forfeits ten times the sum, or ten times the value of that, which was so taken, to the party aggrieved thereby; and is also liable to that party for his damages sustained thereby; besides being subject to the punishment, prescribed by law.

Derivation: Code Civ. Proc., § 1194.

§ 378. Bribing certain public officers.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a person executing any of the functions of a public office, other than one of the officers or persons designated in articles one hundred and twenty-four, one hundred and seventy, and in sections three hundred and seventy-one and twenty-three hundred and twenty of this chapter, with intent to influence him in respect to any act, decision, vote, or other proceeding, in the exercise of his powers or functions, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Derivation: Penal Code, § 78.

People v. Jaehne (1886), 103 N. Y. 191, 4 N. Y. Cr. 478; People v. Sharp (1887), 107 N. Y. 427, 5 N. Y. Cr. 572, rev'g 5 N. Y. Cr. 388; People v. Richmond (1887), 107 N. Y. 427, 5 N. Y. Cr. 97; People v. Mills (1904), 91 App. Div. 331, 86 N. Y. Supp. 529, rev'd 178 N. Y. 274; People v. Jackson (1905), 47 Misc. 73, 95 N. Y. Supp. 286.

§ 379. Bribery of witnesses.

A person who is, or is about to be, a witness upon a trial, hearing, or other proceeding, before any court, or any officer authorized to hear evidence or take testimony, who receives, or agrees or offers to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, is guilty of a felony.

Derivation: Penal Code, § 80.

§ 380. Bribery of labor representatives.

A person who gives or offers to give any money or other things of value to any duly appointed representative of a labor organization with intent to influence him in respect to any of his acts, decisions, or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, is guilty of a misdemeanor; and no person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Derivation: Penal Code, § 447f, added L. 1904, ch. 659

§ 381. Offender a competent witness.

A person offending against any provision of any section of this chapter relating to bribery and corruption, is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation, in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the giving of a bribe which has been accepted, shall not thereafter be liable to indictment, prosecution, or punishment for that bribery, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

Derivation: Penal Code, § 79.

People v. Sharp (1887), 107 N. Y. 427, 5 N. Y. Cr. 572, rev'g 5 N. Y. Cr. 388; People v. Spencer (1892), 66 Hun, 149, 21 N. Y. Supp. 33; People v. Lewis (1895), 14 Misc. 266, 35 N. Y. Supp. 664, 11 N. Y. Cr. 212 70 S. R. 482.

ARTICLE 36.

BUCKET SHOPS.

SECTION 390. Acts prohibited; penalty for violation.
391. Exhibiting quotations; penalty for violation.
392. Written statement to be furnished; presumption.
393. Corporations; additional penalty for second offense.
394. Definitions.

§ 390. Acts prohibited; penalty for violation.

Any person, copartnership, firm, association or corporation, whether acting in his, their or its own right, or as the officer, agent, servant, correspondent or representative of another, who shall,

1. Make or offer to make, or assist in making or offering to make any contract respecting the purchase or sale, either upon credit or margin, of any securities or commodities, including all evidences of debt or property and options for the purchase thereof, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action and other evidences of debt or property and options for the purchase thereof or anything movable that is bought and sold, wherein both the parties thereto intend, that such contract shall be or may be terminated, closed or settled according to, or upon the basis of the public market quotations of prices made on any board of trade or exchange upon which such commodities or securities are dealt in, and without intending a bona fide purchase or sale of the same; or,

2. Makes or offers to make or assists in making or offering to make any contract respecting the purchase or sale, either upon credit or margin, of any such securities or commodities, wherein both parties intend, that such contract shall or may be deemed terminated, closed and settled when such market quotations of prices for such securities or commodities named in such contract shall reach a certain figure, without intending a bona fide purchase or sale of the same; or,

3. Makes or offers to make, or assists in making or offering to make any contract respecting the purchase or sale, either upon credit or margin of any such securities or commodities, wherein both parties do not intend, the actual bona fide receipt or delivery of such securities or commodities, but do intend a settlement of such contract based upon the difference in such public market

quotations of prices at which said securities or commodities are, or are asserted to be, bought or sold; or,

4. Shall, as owner, keeper, proprietor or person in charge of, or as officer, director, stockholder, agent, servant, correspondent or representative of such owner, keeper, proprietor or person in charge, or of any other person, keep, conduct or operate any bucket shop, as hereinafter defined; or knowingly permit or allow or induce any person, copartnership, firm, association or corporation whether acting in his, their or its own right, or as the officer, agent, servant, correspondent or representative of another to make or offer to make therein, or to assist in making therein, or in offering to make therein, any of the contracts specified in any of the three preceding subdivisions of this section,

Shall be guilty of a felony and on conviction thereof shall, if a corporation, be punished by a fine of not more than five thousand dollars for each offense and all other persons so convicted shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than five years, or by both such fine and imprisonment. The prosecution, conviction and punishment of a corporation hereunder shall not be deemed to be a prosecution, conviction or punishment of any of its officers, directors or stockholders.

Derivation: Penal Code, § 355a, added L. 1908, ch. 458.

§ 391. Exhibiting quotations; penalty for violation.

Any person, firm, copartnership, association or corporation receiving, communicating, exhibiting or displaying in any manner any statement of quotations of prices of any such securities or commodities with an intent to make or offer to make or to assist in making or offering to make any contract prohibited in this article shall be guilty of a felony and on conviction thereof shall be punished as provided in section three hundred and ninety of this chapter.

Derivation: Penal Code, § 355b, added L. 1908, ch. 458.

§ 392. Written statement to be furnished; presumption.

Every person, firm, association, copartnership or corporation shall furnish upon written demand to any customer, or principal for whom such person has executed an order for the actual purchase or sale of any such securities or commodities, either for immediate or future delivery, a written statement containing the

names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, place where, the amount of and the price at which the same was either bought or sold; and if such person, firm, association, co-partnership or corporation shall refuse or neglect to furnish such statement within forty-eight hours after such demand, such refusal shall be prima facie evidence that such purchase or sale was made in violation of this article.

Derivation: Penal Code, § 355c, added L. 1908, ch. 458.

§ 393. Corporations; additional penalty for second offense.

If a domestic corporation shall be convicted of a second offense hereunder the supreme court shall have jurisdiction upon an action brought by the attorney-general, in the name of the people, for that purpose, to dissolve such corporation; and if a foreign corporation shall be convicted of a second offense, such court shall have jurisdiction in an action brought in like manner to restrain such corporation from doing business in this state.

Derivation: Penal Code, § 355d, added L. 1908, ch. 458.

§ 394. Definitions.

"Bucket shop" shall mean any building, or any room, apartment, booth, office or store therein or any other place where any contract prohibited by this article is made or offered to be made.

Derivation: Penal Code, § 355e, added L. 1908, ch. 458.

ARTICLE 38.

BURGLARY.

SECTION 400. Definitions.
401. Dwelling-houses, when deemed separate.
402. Burglary in first degree.
403. Burglary in second degree.
404. Burglary in third degree.
405. Unlawfully entering building.
406. Punishment for separate crime committed in building by burglar.
407. Punishment for burglary.
408. Burglar's instruments.

§ 400. Definitions.

Break. The word "break," as used in this article, means and includes:

1. Breaking or violently detaching any part, internal or external, of a building; or,

2. Opening, for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle, or other thing, used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another; or,

3. Obtaining an entrance into such a building or apartment, by any threat or artifice used for that purpose, or by collusion with any person therein; or,

4. Entering such a building or apartment by or through any pipe, chimney, or other opening, or by excavating, digging, or breaking through or under the building, or the walls or foundation thereof.

Building. The term "building," as used in this article, includes a railway car, vessel, booth, tent, shop, inclosed ginseng garden, or other erection or inclosure.

Dwelling-house. A building, any part of which is usually occupied by a person lodging therein at night, is, for the purposes of this article deemed a dwelling-house.

Enter. The word "enter," as used in this article, includes the entrance of the offender into such building or apartment, or the insertion therein of any part of his body or of any in-

strument or weapon held in his hand, and used, or intended to be used, to threaten or intimidate the inmates, or to detach or remove property.

Derivation: Penal Code, §§ 499, 501, 502 and 504, as amended 1903, ch. 332.

Break.—Foster v. People (1874), 3 Hun, 6, aff'd 63 N. Y. 619; Tickner v. People (1876), 6 Hun, 657; McCourt v. People (1876), 64 N. Y. 583; People v. Gartland (1898), 30 App. Div. 534, 52 N. Y. Supp. 352, 13 N. Y. Cr. 163; see also People v. Boujet, 2 Park, 11; People v. Bush, 3 Park, 552; Brown v. State, 55 Ala. 123, 28 Am. Rep. 693; Walker v. State, 63 Ala. 49, 35 Am. Rep. 1; State v. Ward, 43 Conn. 489, 21 Am. Rep. 665 and note, 669; State v. Groning, 33 Kans. 18; Con. v. Strupney, 105 Mass. 588, 7 Am. Rep. 556; Robinson v. State, 53 Md. 151, 36 Am. Rep. 399; State v. McPherson, 70 N. C. 239, 16 Am. Rep. 769; State v. Crawford, 8 N. D. 539, 46 L. R. A. 312; Timmons v. State, 34 Ohio St. 426, 32 Am. Rep. 376; Rolland v. Com. 82 Pa. St. 306, 22 Am. Rep. 758; Johnston v. Com., 85 Pa. St. 54, 27 Am. Rep. 622; Nicholls v. State, 68 Wis. 416, 60 Am. Rep. 870; Smith's Case, 4 City Hall Rec. 62; Guche's Case, 6 City Hall Rec. 12; Clark v. People, 5 Th. & C. 33; Adkinson v. State, 5 Baxt. 569, 30 Am. Rep. 69.

Building.—People v. Richards (1888), 108 N. Y. 137, 1 Am. St. 373, rev'g 44 Hun, 278; Lantry v. Mede (1908), 127 App. Div. 560; see also People v. Hagan, 14 N. Y. Supp. 233; People v. Stickman, 34 Cal. 242; Orrell v. People, 94 Ill. 456, 34 Am. Rep. 241; Barnett v. State, 38 Ohio St. 7.

Dwelling-house.—Rodgers v. People (1881), 86 N. Y. 360, 40 Am. Rep. 548, rev'g 22 Hun, 383; see also Quinn v. People, 71 N. Y. 561, 27 Am. Rep. 87; Jones' Case, 1 City Hall Rec. 183; Mills' Case, 3 City Hall Rec. 192; Robertson's Case, 4 City Hall Rec. 63; Wood's Case, 5 City Hall Rec. 10; Smith's Case, 5 City Hall Rec. 167.

Enter.—Sullivan v. People (1882), 27 Hun, 37; Harrison v. State, 20 Tex. App. 387, 54 Am. Rep. 529.

§ 401. Dwelling-houses, when deemed separate.

If a building is so constructed as to consist of two or more parts, intended to be occupied by different tenants usually lodging therein at night, each part is deemed the separate dwelling-house of a tenant occupying the same. If a building is so constructed as to consist of two or more parts occupied by different tenants separately for any purpose, each part or apartment is considered a separate building within the meaning of this article.

Derivation: Penal Code, § 503.

Mason v. People (1863), 26 N. Y. 200; Rodgers v. People (1881), 86 N. Y. 360, rev'g 22 Hun, 383; see also People v. Calvert, 22 N. Y. Supp. 220; People v. Bush, 3 Park, 552; Smith v. People, 115 Ill. 17; Rolland v. Com., 85 Pa. St. 66, 27 Am. Rep. 626.

§ 402. Burglary in first degree.

A person, who, with intent to commit some crime therein, breaks and enters, in the night time, the dwelling-house of another, in which there is at the time a human being:

1. Being armed with a dangerous weapon; or,

2. Arming himself therein with such a weapon; or,

3. Being assisted by a confederate actually present; or,

4. Who, while engaged in the night time in effecting such entrance, or in committing any crime in such a building, or in escaping therefrom, assaults any person,

Is guilty of burglary in the first degree.

Derivation: Penal Code, § 496.

Mason v. People (1863), 26 N. Y. 200; Foster v. People (1875), 63 N. Y. 619, aff'g 3 Hun, 6; Sullivan v. People (1882), 27 Hun, 35; People v. Meegan (1887), 104 N. Y. 529; People v. Richards (1887), 5 N. Y. Cr. 355, 44 Hun, 283; People v. Moran (1890), 123 N. Y. 254, rev'g 54 Hun, 279, 7 N. Y. Supp. 582; People v. Rainier (1908), 127 App. Div. 47; see also People v. Fellinger, 24 How. Pr. 341, 15 Abb. Pr. 128; State v. Beal, 37 Ohio St. 108, 41 Am. Rep. 490; State v. Teeter, 8 Crim. L. Mag. 58; Myers v. People, 4 Th. & C. 292.

§ 403. Burglary in second degree.

A person who, with intent to commit some crime therein, breaks and enters the dwelling-house of another in which there is a human being, under circumstances not amounting to burglary in the first degree, is guilty of burglary in the second degree.

Derivation: Penal Code, § 497.

§ 404. Burglary in third degree.

A person who:

1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or,

2. Being in any building, commits a crime therein and breaks out of the same,

Is guilty of burglary in the third degree.

Derivation: Penal Code, § 498.

Mason v. People (1863), 26 N. Y. 200; Foster v. People (1875), 63 N. Y. aff'g 1 Lans. 263; People v. Richards (1887), 5 N. Y. Cr. 355, rev'd on other grounds, 108 N. Y. 137; People v. Richards (1888), 108 N. Y. 137, rev'g 44 Hun, 283, 278; People v. Haight (1889), 54 Hun, 9, 7 N. Y. Supp. 89; People v. Bosworth (1892), 64 Hun, 77, 19 N. Y. Supp. 114; People v. Meyers (1900), 162 N. Y. 369, 14 N. Y. Cr. 497; People v. Dixon (1907), 118 App. Div. 593, 103 N. Y. Supp. 186; Lantry v. Mede (1908), 127 App. Div. 560.

§ 405. Unlawfully entering building.

A person who, under circumstances or in a manner not amounting to a burglary, enters a building, or any part thereof, with intent to commit a felony or a larceny, or any malicious mischief, is guilty of a misdemeanor.

Derivation: Penal Code, § 505.

People v. Meegan (1887), 104 N. Y. 529, 5 N. Y. Cr. 523; People v. Corcoran (1901), 34 Misc. 332, 69 N. Y. Supp. 569, 15 N. Y. Cr. 392; Bornman v. Star Co. (1903), 174 N. Y. 220.

§ 406. Punishment for separate crime committed in building by burglar.

A person who, having entered a building under such circumstances as to constitute burglary in any degree, commits any crime therein, is punishable therefor, as well as for the burglary; and may be prosecuted for each crime, separately, or in the same indictment.

Derivation: Penal Code, § 506.

People v. Wilson (1897), 151 N. Y. 403, 12 N. Y. Cr. 116; People ex rel. Dawkins v. Frost (1908), 129 App. Div. 499, 58 Misc. 620, 109 N. Y. Supp. 1121; see also People v. Marks, 4 Park, 153.

§ 407. Punishment for burglary.

Burglary is punishable by imprisonment in a state prison as follows:

1. Burglary in the first degree, for not less than ten years.
2. Burglary in the second degree, for a term not exceeding ten years.
3. Burglary in the third degree, for a term not exceeding five years.

Derivation: Penal Code, § 507, as amended L. 1892, ch. 662, § 13.

People v. Harrington (1884), 3 N. Y. Cr. 139, 15 Abb. N. C. 163, 1 How. Pr. (N. S.) 37; People ex rel. Dawkins v. Frost (1908), 129 App. Div. 499.

§ 408. Burglar's instruments.

A person who makes or mends, or causes to be made or mended, or has in his possession in the day or night time, any engine, machine, tool, false key, picklock, bit, nippers or implements adapted, designed or commonly used for the commission of burglary, larceny or other crime, under circumstances evincing an

intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the same are intended to be so used, shall be guilty of a misdemeanor, and if he has been previously convicted of any crime, he is guilty of a felony.

Derivation: Penal Code, § 508, as amended L. 1884, ch. 369, § 1.

People v. Lyons (1896), 18 Misc. 339, 41 N. Y. Supp. 646; People v. Thompson (1898), 33 App. Div. 177, 53 N. Y. Supp. 497, 13 N. Y. Cr. 273; People v. Reilly (1900), 49 App. Div. 218, 63 N. Y. Supp. 18, aff'd 164 N. Y. 600; see also People v. Morgan, 35 N. Y. St. 643, 13 N. Y. Suppl. 448.

ARTICLE 40.

BUSINESS AND TRADE.

SECTION 420. Article of merchandise defined.
421. Untrue and misleading advertisements.
422. Marking certain articles silver, sterling silver or solid silver.
423. Selling silverware marked coin or coin silver.
424. Marking soldered metal sterling or sterling silver.
425. Marking soldered metal coin or coin silver.
426. Marking metal placed on leather or other substances sterling or sterling silver.
427. Marking metal placed on leather or other substances, coin or coin silver.
428. Marking watch cases sterling or sterling silver.
429. Marking watch cases coin or coin silver.
430. Marking articles made of linen.
431. Marking articles made of gold.
432. Illegal charges for elevating, receiving or discharging grain.
433. Sale of agricultural products on commission.
434. Concealing foreign matter in merchandise.
435. False labels.
436. Using false marks as to manufacture.
437. Penalty for selling half wine not labeled.
438. Skimmed milk.
439. Corrupt influencing of agents, employees or servants.
440. Conducting business under assumed name.
441. Producing unpublished, undedicated or copyrighted opera or dramatic composition, without consent of owner.
442. Provisions when property is purchased on credit by aid of written statement of purchaser's ability to pay.

§ 420. Article of merchandise defined.

The expression "article of merchandise," as used in this article, signifies any goods, wares, work of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale.

Derivation: Penal Code, § 365, as amended L. 1882, ch. 384, § 1.

§ 421. Untrue and misleading advertisements.

Any person, firm, corporation or association, or any employee thereof, who, in a newspaper, circular, circular or form letter or other publication published in this state, knowingly makes or disseminates any statement or assertion of fact concerning the quantity, the quality, the value, the method of production or manufacture, or the reason for the price of his or their merchandise, or the manner or source of purchase of such merchandise, or the

possession of rewards, prizes or distinctions conferred on account of such merchandise or the motive or purpose of a sale, intended to give the appearance of an offer advantageous to the purchaser which is untrue or calculated to mislead; or any person, firm, corporation or association or any employee thereof, who, in a newspaper, circular, circular or form letter or other publication published or circulated in any language in this state, knowingly makes or disseminates any statement or assertion of fact knowing the same to be false, concerning the extent, location, ownership, title or other characteristic quality or attribute of any real estate located in this state or elsewhere, or the motive or purpose of a sale of such real estate intended to give the appearance of an offer advantageous to the purchaser which is untrue and calculated to mislead, is guilty of a misdemeanor. Nothing contained in this section shall apply to a sale of real estate at public auction conducted by an auctioneer duly licensed by a city of the first class. (Am'd by L. 1908, ch. 427, § 1; L. 1911, ch. 759, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 364 (8), added L. 1904, ch. 423, § 1. The last sentence is new. L. 1904, ch. 423, § 2.

See People v. Molins (1888), 7 N. Y. Cr. 51, 10 N. Y. Supp. 130; People v. Fisher (1889), 50 Hun, 552, 3 N. Y. Supp. 786; Richard v. Boland (1893), 5 Misc. 553, 26 N. Y. Supp. 57; Bulena v. Newman (1894), 10 Misc. 460, 31 N. Y. Supp. 449; People v. Hilfman (1901), 61 App. Div. 542, 70 N. Y. Supp. 621, 15 N. Y. Cr. 456; People v. Krivitzky (1901), 168 N. Y. 182, 16 N. Y. Cr. 63; People v. Strauss (1904), 94 App. Div. 453, 88 N. Y. Supp. 40; People v. Blake (1907), 121 App. Div. 613, 106 N. Y. Supp. 319.

§ 422. Marking certain articles silver, sterling silver or solid silver.

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "sterling" or "sterling silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is silver, sterling silver or solid silver, unless nine hundred and twenty-five one-thousandths of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a misdemeanor.

Derivation: Penal Code, § 364a, added L. 1894, ch. 474, § 1, and amended L. 1898, ch. 330, § 1.

People v. Webster (1896), 17 Misc. 410, 40 N. Y. Supp. 1135.

§ 423. Selling silverware marked coin or coin silver.

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "coin" or "coin silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is coin or coin silver, unless nine hundred one-thousandths parts of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a misdemeanor.

Derivation: Penal Code, § 364b, added L. 1894, ch. 474, § 1, and amended L. 1898, ch. 330, § 2.

§ 424. Marking soldered metal sterling or sterling silver.

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped, or branded with the words "sterling" or "sterling silver," unless all of said component parts shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

Derivation: Penal Code, § 364c, added L. 1898, ch. 330, § 3.

§ 425. Marking soldered metal coin or coin silver.

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped, or branded with the words "coin" or "coin silver," unless all of said component parts shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

Derivation: Penal Code, § 364d, added L. 1898, ch. 330, § 3.

§ 426. Marking metal placed on leather or other substances, sterling or sterling silver.

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling" or "sterling silver," unless said applied or attached metal mounting shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

Derivation: Penal Code, § 364e, added L. 1898, ch. 330, § 3.

§ 427. Marking metal placed on leather or other substances, coin or coin silver.

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless said applied or attached metal mounting shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

Derivation: Penal Code, § 364f, added L. 1898, ch. 330, § 3.

§ 428. Marking watch cases sterling or sterling silver.

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements and a case or covering applied or attached thereto, wholly or partially concealing said works or movements marked, stamped or branded with the words "sterling" or "sterling silver," unless said case or covering shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

Derivation: Penal Code, § 364g, added L. 1898, ch. 330, § 3.

§ 429. Marking watch cases coin or coin silver.

Any person, firm, corporation or association who makes or sells,

or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements and a case or covering applied or attached thereto, wholly or partially concealing said works or movements marked, stamped or branded with the words "coin" or "coin silver," unless said case or covering shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

Derivation: Penal Code, § 364h, added L. 1898, ch. 330, § 3.

§ 430. Marking articles made of linen.

Any person, firm, corporation or association who makes or sells or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any collars or cuffs marked, stamped, or branded with the words "linen," "pure linen" or "all linen" or incased or inclosed in any box, package, cover or wrapper or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark, or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing, that such article is "linen," "pure linen," or "all linen," unless the material of which the said collars or cuffs are manufactured contains at least one fold or ply which has a flax thread in both its warp and filling, is guilty of a misdemeanor.

Derivation: Penal Code, § 364i, added L. 1900, ch. 586.

§ 431. Marking articles made of gold.

Any person, firm, corporation or association who or which makes or sells or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, constructed in whole or in part of gold or of any alloy of gold and having stamped, branded, engraved or imprinted thereon any mark indicating or designed or intended to indicate that the gold or alloy of gold in such article is of a greater degree or karat of fineness by more than one karat than the actual quality or fineness of such gold or alloy, is guilty of a misdemeanor.

Derivation: Penal Code, § 364j, added L. 1905, ch. 287.

§ 432. Illegal charges for elevating, receiving or discharging grain.

A person who charges for elevating, receiving or discharging

grain by means of floating or stationary elevators a greater sum than is allowed by law is guilty of a misdemeanor.

Derivation: Penal Code, § 384c, added L. 1896, ch. 551.

§ 433. Sale of agricultural products on commission.

A person who violates any provision of section three hundred and ninety-seven of the general business law is guilty of a misdemeanor.

Derivation: Penal Code, § 384d, added L. 1896, ch. 551.

§ 434. Concealing foreign matter in merchandise.

A person who, with intent to defraud, while putting up in a barrel, bag, bale, box, or other package, cotton, hops, hay, or any other article of merchandise whatever, usually sold by weight in such packages, places or conceals therein any other substance or thing whatever, in a case where special provision for the punishment thereof is not otherwise made by statute, is guilty of a misdemeanor.

Derivation: Penal Code, § 406.

§ 435. False labels.

A person, who, with intent to defraud:

1. Puts upon an article of merchandise, or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; or,

2. Sells or offers for sale an article, which to his knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified; or,

3. Sells or exposes for sale any goods in bulk to which no name or trade-mark shall be attached, and orally or otherwise represents that such goods are the manufacture or production of some other than the actual manufacturer or producer, in a case where the

punishment for such offense is not specially provided for otherwise by statute,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 438, as amended L. 1889, ch. 46.

Low v. Hall (1871), 47 N. Y. 104; Materne v. Horwitz (1885), 101 N. Y. 469, aff'g 50 N. Y. Super. 41; People v. Blake (1907), 121 App. Div. 613, 106 N. Y. Supp. 319, 21 N. Y. Cr. 428.

§ 436. Using false marks as to manufacture.

A person who, with intent to defraud or to enable another to defraud any person, manufactures or knowingly sells or causes to be manufactured or sold, any article, marked, stamped or branded or incased or inclosed in any box, bottle or wrapper, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark which article is not the manufacture, workmanship or production of the person named, indicated or denoted by such marking, stamping or branding, or by or upon such engraving, printed label, stamp, imprint, mark or trade-mark, is guilty of a misdemeanor.

Derivation: Penal Code, § 438a, added L. 1893, ch. 692, § 2.

People v. Blake (1907), 121 App. Div. 613, 106 N. Y. Supp. 319, 21 N. Y. Cr. 428.

§ 437. Penalty for selling half wine not labeled.

A person who sells, offers for sale or manufactures with intent to sell, any wine known as "half wine," which is not stamped, marked or labeled as required by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 438b, added L. 1893, ch. 692, § 2.

§ 438. Skimmed milk.

A person who sells or offers for sale, milk from which the whole or a part of the cream has been skimmed or removed, without disclosing the fact, or having a mark or label, plainly and legibly stating the fact, conspicuously affixed to every can or vessel containing the same, under circumstances not constituting an offense, for the punishment of which provision is otherwise specially made by statute, is guilty of a misdemeanor.

Derivation: Penal Code, § 439.

Verona Central Cheese Co. v. Murtaugh (1872), 50 N. Y. 318, rev'g 4 Lans. 17; People v. Fauerback, 5 Park, 311.

§ **439. Corrupt influencing of agents, employees or servants.** Whoever gives, offers or promises to an agent, employee or servant, any gift or gratuity whatever, without the knowledge and consent of the principal, employer or master of such agent, employee or servant, with intent to influence his action in relation to his principal's, employer's or master's business; or an agent, employee or servant who without the knowledge and consent of his principal, employer or master, requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner to his principal's, employer's or master's business; or an agent, employee or servant, who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent, employee or servant such commission, discount or bonus shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by such fine and by imprisonment for not more than one year.

Derivation: Penal Code, § 384r, added L. 1905, ch. 136.

Sirkin v. Fourteenth Street Store (1908), 124 App. Div. 387, 108 N. Y. Supp. 830, 55 Misc. 288, 105 N. Y. Supp. 179, 54 Misc. 136; People v. Pergoli (N. Y. Special Sessions), N. Y. L. J., Jan. 14, 1907.

§ **440. Conducting business under assumed name.**

1. No person or persons shall hereafter carry on or conduct or transact business in this state under any assumed name or under any designation, name or style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business, unless such person or persons shall file in the office of the clerk of the county or counties in which such person or persons conduct, or transact or intend to conduct or transact such business, a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post-office address or

addresses of said person or persons. Said certificate shall be executed and duly acknowledged by the person or persons so conducting, or intending to conduct said business.

2. Persons conducting such business under an assumed name, or under any such designation referred to in subdivision one, on September first, nineteen hundred, shall file such certificate as hereinbefore prescribed, within thirty days after that date, and persons thereafter conducting or transacting business as aforesaid shall, before commencing said business, file such certificate in the manner hereinbefore prescribed.

3. The several county clerks of this state shall keep an alphabetical index of all persons filing certificates, provided for herein, and for the indexing and filing of such certificates, they shall receive a fee of twenty-five cents. A copy of such certificate duly certified to by the county clerk in whose office the same shall be filed shall be presumptive evidence in all courts of law in this state of the facts therein contained.

4. This section shall in no way affect or apply to any corporation duly organized under the laws of this state, or to any corporation organized under the laws of any other state and lawfully doing business in this state, nor shall this section be deemed or construed to prevent the lawful use of a partnership name or designation, provided that such partnership name or designation shall include the true or real name of at least one of such persons transacting such business.

5. Any person or persons carrying on, conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this section shall be guilty of a misdemeanor.

Derivation: Penal Code, § 363b, added L. 1900, ch. 216.

Doyle v. Shuttleworth (1903), 41 Misc. 42, 83 N. Y. Supp. 609; Loeb v. Fireman's Ins. Co. (1902), 38 Misc. 107, 77 N. Y. Supp. 106, aff'd 78 App. Div. 116; Doyle v. Shuttleworth (1903), 41 Misc. 44, 83 N. Y. Supp. 609; Slater v. Slater (1903), 78 App. Div. 449, 453, 80 N. Y. Supp. 363; Castle Bros. v. Graham (1903), 87 App. Div. 97, 84 N. Y. Supp. 120; Pettes v. American Watchman's Clock Co. (1903), 89 App. Div. 345, 85 N. Y. Supp. 900; Steinfeld v. Nat. Shirt Waist Co. (1904), 99 App. Div. 288, 90 N. Y. Supp. 964; Matter of Kaffenburgh (1907), 188 N. Y. 49, 56, aff'g 115 App. Div. 346, 101 N. Y. Supp. 507; Barrow v. Maceau (1908), 124 App. Div. 667, 109 N. Y. Supp. 105.

§ 441. Producing unpublished, undedicated or copyrighted opera or dramatic composition, without consent of owner.

Any person who causes to be publicly performed or represented

for profit any unpublished, undedicated or copyrighted dramatic composition, or musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished, undedicated or copyrighted and without the consent of its owner, or proprietor, permits, aids or takes part in such a performance or representation, shall be guilty of a misdemeanor.

Derivation: Penal Code, § 729, added L. 1899, ch. 475.

§ 442. Provisions when property is purchased on credit by aid of written statement of purchaser's ability to pay.

Whenever property shall be purchased by aid of a statement relating to the purchaser's means or ability to pay, made in writing and signed by the party to be charged, and in said statement the party to be charged shall state that he conducts a specified kind of business and keeps books of account of said business, then, if at the expiration of any term of credit obtained by him in so purchasing said property he shall fail to pay for the same, he shall at all times during the period of ninety days subsequent to such failure to pay, upon the request of the persons from whom said property was purchased, or their agents duly accredited in writing, produce within ten days after such request is made his said books of account and each and every one of them mentioned or described in said statement and permit the persons from whom said property was purchased, or their agents duly accredited in writing, to fully examine such books of account and each and every one of them mentioned or described in said statement, and to make copies of any part thereof. Upon such request being made, failure to so produce within ten days said books of account and each and every one of them mentioned or described in said statement shall be presumptive evidence that each and every pretense relating to the purchaser's means or ability to pay in said statement contained were false at the time of making said statement and were known to the purchaser to be false.

Derivation: Penal Code, § 544, as amended L. 1905, ch. 556, in part. For remainder of section, see § 947, *post*.

Watson v. People (1882), 87 N. Y. 561, aff'g 26 Hun, 76; People v. Moore (1885), 37 Hun, 93, 3 N. Y. Cr. 468; People v. Dumar (1886), 106 N. Y. 502, 8 N. Y. Cr. 268, rev'g 42 Hun, 80, 5 N. Y. Cr. 55; People v. Page (1889), 4 N. Y. Supp. 780, 7 N. Y. Cr. 5; People v. Hart (1901), 35 Misc. 188, 71 N. Y. Supp. 492; People ex rel. Corkran v. Hyatt (1902), 172 N. Y. 176, 187, rev'g

72 App. Div. 629, 76 N. Y. Supp. 1026; People v. Rothstein (1904), 180 N. Y. 148, aff'g 95 App. Div. 292, 88 N. Y. Supp. 622, 18 N. Y. Cr. 449, 42 Misc. 124, 18 N. Y. Cr. 66, 85 N. Y. Supp. 1076; People v. Snyder (1906), 110 App. Div. 699, 700, 97 N. Y. Supp. 469; People v. Levin (1907), 119 App. Div. 233, 104 N. Y. Supp. 647, 21 N. Y. Cr. 182.

§ 443. (Added, 1909.) Tickets issued by People's Institute not transferrable.

It shall be unlawful for any person or corporation to buy, sell or otherwise transfer, or receive by transfer, for a consideration, any ticket, contract or memoranda issued by the corporation or association known as the People's Institute entitling a person or persons to a reduced fee for admission to any dramatic or other performance or entertainment. A person or corporation violating the provisions of this section is guilty of a misdemeanor.

Added by L. 1909, Ch. 424. In effect Sept. 1, 1909.

ARTICLE 42.

CANALS.

SECTION 460. Delivering false bill of lading to canal collector.
461. Weighmaster making false entry of weight of canal boat.
462. Canal officer concealing frauds upon the revenue.
463. Wilful injuries to the canals.
464. Drawing water from canals.
465. Canal officer accepting bribe to allow water to be drawn from canals.

§ 460. Delivering false bill of lading to canal collector.

A person whose duty it is to deliver to any collector of tolls upon any of the canals belonging to this state, a bill of lading of any property transported upon such canal, who delivers a false bill of lading as true, or makes or signs a false bill of lading, intending it to be delivered as true, knowing such bill to be false, is punishable by imprisonment in a state prison not exceeding two years, or by a fine not exceeding three times the value of the property omitted in such bill, or both.

Derivation: Penal Code, § 476.

Davis v. Bemis (1869), 40 N. Y. 453; Fire Department v. Stetson, 14 Daly, 130.

§ 461. Weighmaster making false entry of weight of canal boat.

A weighmaster upon any of the canals belonging to this state, and a clerk of such weighmaster, who makes a false entry of the weight of any boat, or cargo of any boat, navigating such canal, or who makes a false certificate of the light weight of any boat, knowing such entry or certificate to be false, is guilty of a misdemeanor.

Derivation: Penal Code, § 477.

§ 462. Canal officer concealing frauds upon the revenue.

A public officer or agent employed by the people of this state in relation to the canals belonging to this state, who knows, or has good reason to believe that any fraud upon the revenues of the canals has been committed or attempted, and who omits to dis-

close the same, and enforce the penalties therefor, if within his power, is guilty of a misdemeanor.

Derivation: Penal Code, § 478.

§ 463. Wilful injuries to the canals.

A person who, without authority of law, wilfully inflicts an injury upon any of the canals belonging to this state, or disturbs or injures any of the boats, locks, bridges, buildings, machinery or other works or erections connected with any such canal, and in which the people of this state have an interest, is guilty of felony.

Derivation: Penal Code, § 479.

Sipple v. State (1885), 99 N. Y. 289, 16 Abb. N. C. 434; People v. O'Connor (1900), 31 Misc. 668, 66 N. Y. Supp. 126; People v. Manahan (1901), 61 App. Div. 75, 70 N. Y. Supp. 108, 15 N. Y. Cr. 431.

§ 464. Drawing water from canals.

A person who draws water from any canal in this state, or from a feeder or reservoir of any canal, during the season of navigation of the canal, and to the detriment or injury of the navigation thereof, without authority of law, is punishable by imprisonment in a county jail not less than one year, and by a fine not less than one thousand dollars.

Derivation: Penal Code, § 480.

Robinson v. Chamberlain (1866), 34 N. Y. 389; Sipple v. State (1885), 99 N. Y. 289, 16 Abb. N. C. 434; see also Varick v. Smith, 5 Paige, 136; Lynch v. Stone, 4 Den. 356; Ex parte Miller, 2 Hill, 418.

§ 465. Canal officer accepting bribe to allow water to be drawn from canals.

A public officer or agent employed by the people of this state in relation to the canals belonging to the state, or a contractor for canal repairs, or person having charge of any canal, or any part thereof, or of any lock, waste weir, feeder or other work belonging thereto, or being employed thereon, who asks, or accepts or promises to accept any bribe as an inducement to permit water to be drawn from a canal, feeder or reservoir in violation of the last section; and a person who gives, or offers or promises to give to any officer or person above mentioned, any bribe as an inducement to him to permit water to be drawn from any canal, feeder or reservoir in violation of this section, is guilty of a misdemeanor.

Derivation: Penal Code, § 481.

ARTICLE 44

CHILDREN.

SECTION 480. Abandonment of children.
481. Abandonment of child under fourteen years.
482. Unlawfully omitting to provide for child.
483. Endangering life or health of child.
484. Permitting children to attend certain resorts.
485. Certain employment of children prohibited.
486. Prohibited acts; destitute children.
487. Children's courts.
488. Sending messenger boys to certain places.
489. Furnishing minors in reformatories with tobacco prohibited.
490. Duty of officers.
491. Fines to be paid to society for prevention of cruelty to children.
492. Concealing birth of child.
493. Taking apprentice without consent of guardian.

§ 480. Abandonment of children.

A parent or other person charged with the care or custody for nurture or education of a child under the age of sixteen years, who abandons the child in destitute circumstances and wilfully omits to furnish necessary and proper food, clothing or shelter for such child is guilty of felony, punishable by imprisonment for not more than two years, or by a fine not to exceed one thousand dollars, or by both. In case a fine is imposed the same may be applied in the discretion of the court to the support of such child. Proof of the abandonment of such child in destitute circumstances and omission to furnish necessary and proper food, clothing or shelter is prima facie evidence that such omission is wilful. The provisions of section twenty-four hundred and forty-five prohibiting the disclosure of confidential communications between husband and wife shall not apply to prosecutions for the offense here defined. A previous conviction of felony or misdemeanor shall not prevent the court from suspending sentence upon a conviction under this section, or from arbitrarily fixing the limit of imprisonment or fine, in case imprisonment or fine is imposed upon conviction herein.

Nothing in this section shall be deemed or construed to repeal, amend, impair or in any manner affect the provisions of sections four hundred and eighty-one, four hundred and eighty-two and

four hundred and eighty-three of this chapter or any other existing provisions of law relating to abandonment or other acts of cruelty to children.

Derivation: Penal Code, § 287a, added L. 1905, ch. 168, § 1. New matter, L. 1905, ch. 168, § 2.

People v. Joyce (1906), 112 App. Div. 717, 98 N. Y. Supp. 863, 20 N. Y. Cr. 107.

§ 481. Abandonment of child under fourteen years.

A parent, or other person having the care or custody, for nurture or education, of a child under the age of fourteen years, who deserts the child in any place, with intent wholly to abandon it, is punishable by imprisonment in a state prison for not more than seven years.

Derivation: Penal Code, § 287, as amended L. 1903, ch. 376, § 1; L. 1892, ch. 325, § 2.

Bayne v. People (1878), 14 Hun, 181; People ex rel. Douglass v. Naehr (1883), 30 Hun, 461; People v. Trank (1903), 88 App. Div. 294, 85 N. Y. Supp. 55, 18 N. Y. Cr. 42; People v. Joyce (1906), 112 App. Div. 717, 720, 722, 98 N. Y. Supp. 863, 20 N. Y. Cr. 104.

§ 482. Unlawfully omitting to provide for child.

A person who:

1. Wilfully omits, without lawful excuse, to perform a duty by law imposed upon him to furnish food, clothing, shelter or medical attendance to a minor, or to make such payment toward its maintenance as may have been required by the order of a court or magistrate when such minor has been committed to an institution; or,

2. Not being a superintendent of the poor, or a superintendent of alms-houses, or an institution duly incorporated for the purpose, without having first obtaned a license in writing so to do from the board of health of the city or town wherein such females or children are received, boarded or kept, erects, conducts, establishes or maintains any maternity hospital, lying-in asylum where females may be received, cared for or treated during pregnancy, or during or after delivery; or receives, boards or keeps any nusing children, or any children under the age of twelve years not his relatives, apprentices, pupils or wards without legal commitment; or,

3. Being a midwife, nurse or other person having the care of

an infant within the age of two weeks neglects or omits to report immediately to the health officer or to a legally qualified practitioner of medicine of the city, town or place where such child is being cared for, the fact that one or both eyes of such infant are inflamed or reddened whenever such shall be the case, or who applies any remedy therefor without the advice, or except by the direction of such officer or physician; or,

4. Neglects, refuses or omits to comply with any provisions of this section, or violates the provisions of such license,

Is guilty of a misdemeanor.

Every such license must specify the name and residence of the person so undertaking the care of such females or children, and the place and the number of females or children thereby allowed to be received, boarded and kept therein, and shall be revocable at will by the authority granting it. Every person so licensed must keep a register wherein he shall enter the names and ages of all such children and of all children born on said premises, and the names and residences of their parents, as far as known, the time of the reception and discharge of such children and the reasons therefor, and also a correct register of the name and age of every child under the age of five years who is given out, adopted, taken away or indentured from such place to or by any one, together with the name and residence of the person so adopting, taking or indenturing such child; and shall cause a correct copy of such register to be sent to the authority issuing such license within forty-eight hours after such child is so given out, adopted, taken away or indentured. It shall be lawful for the officers of any incorporated society for the prevention of cruelty to children and of such board of health at all reasonable times to enter and inspect the premises wherein such females and children are so boarded, received or kept, and also such license, register and the children.

5. No institution shall be incorporated for any of the purposes mentioned in this section except with the written consent and approbation of a justice of the supreme court, upon the certificate in writing of the state board of charities approving of the organization and incorporation of such institution. The said board of charities may apply to the supreme court for the cancellation of any certificate of incorporation previously filed without its approval, and may institute and maintain an action in such court through the attorney-general to procure a judgment dissolving any

such corporation not so incorporated and forfeiting its corporate rights, privileges and franchises.

Derivation: Penal Code, § 288, as amended L. 1884, ch. 46, § 3; L. 1886, ch. 31, § 2; L. 1888, ch. 145, § 4; L. 1892, ch. 325, § 3; subd. 5, which was added L. 1894, ch. 171.

Furman v. Van Sise (1874), 56 N. Y. 435; Cowley v. People (1880), 83 N. Y. 464, 38 Am. Rep. 464, aff'g 21 Hun, 415, 8 Abb. N. C. 1; People ex rel. Wagner v. Hagan (1900), 52 App. Div. 387, 65 N. Y. Supp. 120, 15 N. Y. Cr. 136, aff'd 165 N. Y. 607; People v. Pierson (1903), 63 L. R. A. 187, 176 N. Y. 201, rev'g 80 App. Div. 415, 81 N. Y. Supp. 214; People v. Allcutt (1907), 117 App. Div. 552, 102 N. Y. Supp. 678, 20 N. Y. Cr. 567; People v. Quimby (1903), 113 App. Div. 794, 99 N. Y. Supp. 330; People v. Joyce (1906), 112 App. Div. 722, 98 N. Y. Supp. 863, 20 N. Y. Cr. 107; City of New York v. Chelsea Jute Mills (1904), 43 Misc. 269, 88 N. Y. Supp. 1085; see also Cromwell v. Benjamin, 41 Barb. 558; Dedham v. Natick, 16 Mass. 140; Kelly v. Davis, 49 N. H. 176, 6 Am. Rep. 499.

§ 483. Endangering life or health of child.

A person who:

1. Wilfully causes or permits the life or limb of any child actually or apparently under the age of sixteen years to be endangered, or its health to be injured, or its morals to become depraved; or,

2. Wilfully causes or permits such child to be placed in such a situation or to engage in such an occupation that its life or limb is endangered, or its health is likely to be injured, or its morals likely to be impaired,

Is guilty of a misdemeanor.

3. [Subd. repealed by L. 1910, ch. 699, in effect June 25, 1910.]

Derivation: Penal Code, § 289, as amended L. 1888, ch. 145, § 5; subd. 3, which was added L. 1905, ch. 655, § 2.

Cowley v. People (1880), 83 N. Y. 464; People v. Pierson (1903), 176 N. Y. 201, rev'g 80 App. Div. 415, 81 N. Y. Supp. 214; People v. Joyce (1906), 112 App. Div. 722, 98 N. Y. Supp. 863, 20 N. Y. Cr. 107; People v. Donahue (1906), 114 App. Div. 830, 100 N. Y. Supp. 202, 20 N. Y. Cr. 341.

§ **484. Permitting children to attend certain resorts.** A person who:

1. Admits to or allows to remain in any dancehouse, public pool or billiard room, public bowling alley, concert saloon, theatre, museum, skating rink, kinetoscope or moving picture performance, or in any place where wines or spirituous or malt liquors are sold or given away, or in any place of entertainment injurious to health or morals, owned, kept, leased, managed or controlled by him or by his employer, or where such person is employed or performs such services as doorkeeper or ticket seller or ticket collector, any child actually or apparently under the age of sixteen years, unless accompanied by its parent or guardian, or unless such theatrical performance, kinetoscope or moving picture exhibition or other entertainment is given under the auspices, or for the benefit of any school or church or education or religious institution, not operated for profit, or, (Amended by L. 1909, ch. 278; L. 1910, chs. 383, 475, L. 1911, ch. 243, in effect Sept. 1, 1911.)

2. Suffers or permits any such child to play any game of skill or chance in any such place, or in any place adjacent thereto, or to be or remain therein, or admits to or allows to remain in any reputed house of prostitution or assignation, or in any place where opium or any preparation thereof is smoked, any child actually or apparently under the age of sixteen years; or,

3. Sells or gives away, or causes or permits or procures to be sold or given away to any child actually or apparently under the age of sixteen years any beer, ale, wine, or any strong or spirituous liquor; or,

4. Being a pawnbroker or person in the employ of a pawnbroker, makes any loan or advance or permits to be loaned or advanced to any child actually or apparently under the age of sixteen years any money, or in any manner directly or indirectly receives any goods, chattels, wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise howsoever; or,

5. Sells, pays for or furnishes any cigar, cigarette or tobacco in any of its forms to any child actually or apparently under the age of sixteen years; or.

6. Being the owner, keeper or proprietor of a junk shop, junk cart or other vehicle or boat or other vessel used for the collection of junk, or any collector of junk, receives or purchases any goods, chattels, wares or merchandise from any child under the age of sixteen years,

Is guilty of a misdemeanor.

It shall be no defense to a prosecution for a violation of sub-*divisions three, four,* five or six of this section, that in the trans-

action upon which the prosecution is based the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.

Derivation: Penal Code, § 290, as amended L. 1889, ch. 170; L. 1884, ch. 46, § 4; L. 1886, ch. 31, § 3; L. 1889, ch. 170, § 1; subd. 6, added L. 1903; ch. 309 and subd. 8, added L. 1906, ch. 41.

People v. Jensen (1904), 99 App. Div. 355, 359, 90 N. Y. Supp. 1062, 19 N. Y. Cr. 7; People v. Goeghegan (1883), Sup. Ct. Sp. Term, Barrett, J., Apr. 25, 1883.

Subd. 1.—People ex rel. Jacques v. Sheriff (1907), 54 Misc. 8, 122 App. Div. 878, 107 N. Y. Supp. 415, 21 N. Y. Cr. 557.

Subd. 3.—People v. Koenig (1896), 9 App. Div. 436, 41 N. Y. Supp. 283; People v. Hartstein (1906), 49 Misc. 336, 99 N. Y. Supp. 272, 20 N. Y. Cr. 1, 2.

Subd. 5.—People v. Zabor (1904), 183 N. Y. 242, 103 App. Div. 594, 92 N. Y. Supp. 1139, 44 Misc. 634, 90 N. Y. Supp. 412.

Subd. 6.—People v. McGuire (1906), 113 App. Div. 631, 99 N. Y. Supp. 91, 20 N. Y. Cr. 125.

§ 485. Certain employment of children prohibited.

A person who employs or causes to be employed, or who exhibits, uses, or has in custody, or trains for the purpose of the exhibition, use or employment of, any child actually or apparently under the age of sixteen years; or who having the care, custody or control of such a child as parent, relative, guardian, employer or otherwise, sells, lets out, gives away, so trains, or in any way procures or consents to the employment, or to such training, or use, or exhibition of such child; or who neglects or refuses to restrain such child from such training, or from engaging or acting:

1. As a rope or wire walker, gymnast, wrestler, contortionist, rider or acrobat; or upon any bicycle or similar mechanical vehicle or contrivance; or,

2. In begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or in peddling; or,

3. In singing; or dancing; or playing upon a musical instrument; or in a theatrical exhibition; or in any wandering occupation; or,

4. In any illegal, indecent or immoral exhibition or practice; or in the exhibition of any such child when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or

5. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of the child,

Is guilty of a misdemeanor.

But this section does not apply to the employment of any child as a singer or musician in a church, school or academy; or in teaching or learning the science or practice of music; or as a musician in any concert or in a theatrical exhibition, with the written consent of the mayor of the city, or the president of the board of trustees of the village where such concert or exhibition takes place. Such consent shall not be given unless forty-eight hours previous notice of the application shall have been served in writing upon the society mentioned in section four hundred and ninety-one of this chapter, if there be one within the county, and a hearing had thereon if requested, and shall be revocable at the will of the authority giving it. It shall specify the name of the child, its age, the names and residence of its parents or guardians, the nature, time, duration and number of performances permitted, together with the place and character of the exhibition. But no such consent shall be deemed to authorize any violation of the first, second, fourth or fifth subdivisions of this section.

Derivation: Penal Code, § 292, as amended L. 1884, ch. 46, § 6; L. 1886, ch. 31, § 5; L. 1892, ch. 309.

The Society for the Ref. of Juv. Del. v. Diers (1871), Sup. Ct., Gen. Term, Jan., 1871, 10 Abb. Pr. (N. S.) 216; People v. Denabla (1876), N. Y. Spec. Sess., Nov. 16, 1876; People v. Leonard (1876), Donahue, J., Dec. 11, 1876; Matter of Rivers (1877), Donahue, J., May 25, 1877; Matter of Corinne (1881), Sup. Ct., Donahue, J., Daily Register, Dec. 16, 1881; People v. Alberle (1883), N. Y. Spec. Sess., aff'd by Hon. Rufus B. Cowing, City Judge, Mar. 27, 1883; People v. Perkins (1884), N. Y. Spec. Sess., aff'd by Recorder Smyth, 1884, MS. opinion; Ryan v. Buchanan (1885), 37 Hun, 425; People v. Ewer (1892), 141 N. Y. 129, aff'g 8 N. Y. Cr. 383; Matter of Stevens (1893), 70 Hun, 243, 24 N. Y. Supp. 780; People ex rel. Saunders v. Grant (1893), 70 Hun, 233, 24 N. Y. Supp. 776; People v. Malone (1901), 63 App. Div. 117, 71 N. Y. Supp. 224; People v. Lochner (1904), 177 N. Y. 153; see also Matter of Donahue, 1 Abb. N. C. 1.

§ **486. Prohibited acts; destitute children.**

Any child actually or apparently under the age of sixteen years who is found:

1. Begging or receiving or soliciting alms, in any manner or under any pretense; or gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or,

2. Not having any home or other place of abode or proper

guardianship; or who has been abandoned or improperly exposed or neglected, by its parents or other person or persons having it in charge, or being in a state of want or suffering; or,

3. Destitute of means of support, being an orphan, or living or having lived with or in custody of a parent or guardian who has been sentenced to imprisonment for crime, or who has been convicted of a crime against the person of such child, or has been adjudged an habitual criminal; or,

4. Frequenting or being in the company of reputed thieves or prostitutes, or in a reputed house of prostitution or assignation, or living in such a house either with or without its parent or guardian, or being in concert saloons, dance houses, theatres, museums or other places of entertainment, or places where wines, malt or spirituous liquors are sold, without being in charge of its parent or guardian; or playing any game of chance or skill in any place wherein or adjacent to which any beer, ale, wine or liquor is sold or given away, or being in any such place; or,

5. Coming within any of the descriptions of children mentioned in section four hundred and eighty-five,

Must be arrested and brought before a proper court or magistrate, who may commit the child to any incorporated charitable reformatory, or other institution, and when practicable, to such as is governed by persons of the same religious faith as the parents of the child, or may make any disposition of the child such as now is, or hereafter may be authorized in the cases of vagrants, truants, paupers or disorderly persons, but such commitment shall, so far as practicable, be made to such charitable or reformatory institutions.

Whenever any child shall be committed to an institution under this chapter, and the warrant or commitment shall so state, and it shall appear therefrom that either parent, or any guardian or custodian of such child, was present at the examination before such court or magistrate, or had such notice thereof as was by such court or magistrate deemed and adjudged sufficient, no further or other notice required by any local or special statute, in regard to the committal of children to such institution, shall be necessary, and such commitment shall in all respects be sufficient to authorize such institutions to receive and retain such child in its custody as therein directed.

Whenever any commitment of a child shall for any reason be adjudged or found defective, a new commitment of the child may

be made or directed by the court or magistrate, as the welfare of the child may require. And no commitment of a child which shall recite therein the facts upon which it is based shall be deemed invalid by reason of any omission of the court or magistrate by whom such commitment is made to file any documents, papers or proceedings relating thereto, or by reason of any limitation as to the age of the child committed, contained in the act or articles of incorporation of the institution to which it may have been committed.

6. No child actually or apparently under sixteen years of age shall smoke or in any way use any cigar, cigarette or tobacco in any form whatsoever in any public street, place or resort. A violation of this subdivision shall be a misdemeanor, and shall be punished by a fine not exceeding ten dollars and not less than two dollars for each offense.

7. All children actually or apparently under the age of sixteen who desert their homes without good or sufficient cause, or keep company with dissolute, immoral or vicious persons, shall be deemed disorderly children. Those actually or apparently under the like age who are not susceptible of proper restraint or control by their parents, guardians, or lawful custodians, or who are habitually disobedient to their reasonable and lawful commands, shall be deemed ungovernable children. A disorderly or ungovernable child may be dealt with as provided in the fifth subdivision of this section.

8. Any magistrate having criminal jurisdiction may commit, temporarily, to an institution authorized by law to receive children on final commitment, and to have compensation therefor from the city or county authorities, any child under the age of sixteen years, who is held for trial on a criminal charge; and may, in like manner, so commit any such child held as a witness to appear on the trial of any criminal case; which institution shall thereupon receive the same, and be entitled to the like compensation proportionally therefor as on final commitment, but subject to the order of the court as to the time of detention and discharge of the child. Any such child convicted of any misdemeanor shall be finally committed to some such institution, and not to any prison or jail, or penitentiary, longer than is necessary for its transfer thereto. No child under restraint or conviction, actually or apparently under the age of sixteen years, shall be placed in any prison or place of confinement, or in any court-room, or in

any vehicle for transportation in company with adults charged with or convicted of crime.

9. Whenever any child is brought before any court or magistrate, to be dealt with under any of the subdivisions of this section, instead of committing such child to confinement in any institution, the court or magistrate may place such child under the custody of a probation or parole officer, and at any time within one year thereafter such court or magistrate, may issue a warrant for such child, and after giving such child an opportunity to be heard, may make the commitment which could have been made in the first instance as aforesaid. The foregoing provision shall not apply to a children's court created by special enactment in cities of the first class but this exception shall not be construed as taking away or limiting any jurisdiction now possessed by such children's courts.

Derivation: Penal Code, § 291, as amended L. 1884, ch. 46, § 5; subd. 5, as amended L. 1886, ch. 31, § 4, and L. 1888, ch. 145, § 6; subd. 6, as amended L. 1892, ch. 217, § 1; subd. 7, added L. 1890, ch. 417, § 1; subd. 8, added L. 1903, ch. 50, § 1; subd. 9, added L. 1905, ch. 655, § 3. For remainder of section 291 of the Penal Code, see § 487, *post*.

People ex rel. Hoey v. Supt. House of Refuge (1860), Sup. Ct., Apr., 1860, MS. opinion; Matter of Williamson (1867), Sup. Ct., 3 Abb. Pr. (N. S.) 244; People ex rel. Tweed v. Liscomb (1875), 60 N. Y. 559, rev'g 3 Hun, 760, 6 Th. & C. 658; Matter of Haller (1877), 12 Hun, 131, 3 Abb. N. C. 65; Cowley v. People (1880), 83 N. Y. 464, aff'g 21 Hun, 415, 8 Abb. N. C. 1; People ex rel. McCarthy v. French (1881), 25 Hun, 111; People ex rel. Corcado v. Catholic Protectory, Sup. Ct. Chambers, Lawrence, J., March 27, 1882; Matter of Wright (1883), 29 Hun, 357; People v. Maschke (1884), 2 N. Y. Cr. 168; Matter of Larson (1884), 31 Hun, 539; People ex rel. Newby v. N. Y. S. P. C. C., Report of Hon. Nelson J. Waterbury, Referee, confirmed by Sup. Ct., Sp. Term, Donahue, J., Daily Reg., Mar. 27, 1884; Matter of Allegi, Sup. Ct. Chambers, Bartlett, J., Daily Reg., August 22, 1884; Matter of Cohen, Daily Reg., Dec. 26, 1884; People ex rel. Perkerson v. Sisters of the Order of St. Dominick (1885), 34 Hun, 463, 2 N. Y. Cr. 528, 1 How. Pr. (N. S.) 132; People ex rel. Downey v. Dains (1885), 38 Hun, 43; Matter of Averlino, Andrews, J., Daily Reg., Mar. 10, 1885; Matter of Barry, Daily Reg., March 10, 1885; Matter of Moffit, Daily Reg., May 4, 1886; Matter of Maloney (1889), 51 Hun, 372, 4 N. Y. Supp. 428, 6 N. Y. Cr. 248; People ex rel. Brown v. Carpenter (1890), 123 N. Y. 640; People ex rel. Zeese v. Masten (1894), 79 Hun, 583, 29 N. Y. Supp. 891; People ex rel. Plot v. Poly (1896), 17 Misc. 162, 40 N. Y. Supp. 990; People v. Giles (1897), 152 N. Y. 136, rev'g 12 App. Div. 495, 42 N. Y. Supp. 749; People ex rel. James v. N. Y. S. P. C. C. (1897), 19 Misc. 561, 44 N. Y. Supp. 1098, 12 N. Y. Cr. 86; Matter of Laubentracht, N. Y. L. J., Sept. 28, 1897; Matter of Braffett (1899), 27 Misc. 329, 57 N. Y. Supp. 890; Matter of Knowack (1899), 158 N. Y. 482, aff'g 29

App. Div. 627, 52 N. Y. Supp. 1144; People ex rel. Amato v. House of Good Shepherd (1899), 29 Misc. 466, 60 N. Y. Supp. 771, 14 N. Y. Cr. 304; Matter of Cohn (1899), 28 Misc. 658, 59 N. Y. Supp. 1028; People ex rel. Horton v. Fuller (1899), 41 App. Div. 404, 58 N. Y. Supp. 835; People ex rel. Aikens v. State Industrial School (1900), 33 Misc. 396, 67 N. Y. Supp. 674, 15 N. Y. Cr. 278; Matter of New York Juvenile Asylum, N. Y. L. J., May 8, 1900; People ex rel. Dunlap v. New York Juvenile Asylum (1901), 58 App. Div. 133, 68 N. Y. Supp. 656; People v. Hines (1901), 57 App. Div. 419, 68 N. Y. Supp. 276; People v. Angie (1902), 74 App. Div. 542, 77 N. Y. Supp. 832; People ex rel. Tully v. Fallon (1902), 73 App. Div. 471, 77 N. Y. Supp. 292; People ex rel. Bolt v. Society (1905), 48 Misc. 175, 95 N. Y. Supp. 250; People v. O'Neill (1907), 117 App. Div. 827, 102 N. Y. Supp. 988; see also People v. Baker, 3 N. Y. Supp. 530; Matter of Baker, 11 How. Pr. 418, 425; People v. Brown, 23 Wend. 47; Matter of Coughlin, 62 How. Pr. 34; People v. Degnen, 6 Abb. Pr. (N. S.) 87, 54 Barb. 105; Matter of Diss Debar, 3 N. Y. Supp. 667; Matter of Donahue, 1 Abb. N. C. 1; People v. Duffy, 5 Barb. 205; People ex rel. Eck v. American Guardian Society, 1 How. Pr. (N. S.) 137; Matter of Forsyth, 66 How. Pr. 180; People v. The Keeper, etc., 37 How. Pr. 494; People ex rel. Day v. Mount Magdalen School of Industry, 28 N. Y. St. 254, 7 N. Y. Supp. 737; Matter of Moses, 13 Abb. N. C. 1; Matter of Nichols, 19 Abb. N. C. 138, 4 N. Y. St. 659; Matter of Roach, Gen. Term, 18 Week. Dig. 514; People ex rel. Roddy v. N. Y. Juvenile Asylum, 12 Abb. Pr. 92; People v. The Superintendent, etc., 8 Abb. Pr. (N. S.) 112; Com. v. Allen, 15 B. Monr. 1; Com. v. Harvey, 16 B. Monr. 1.

§ 487. Children's courts.

All cases involving the commitment or trial of children, actually or apparently under the age of sixteen years, for any violation of law, in any court shall be heard and determined by such court, at suitable times to be designated therefor by it, separate and apart from the trial of other criminal cases, of which session a separate docket and record shall be kept. All such cases shall, so far as practicable, be heard and determined in a separate court room to be known as the children's court and to be used exclusively for the examination and trial of children, actually or apparently under the age of sixteen years, charged with any offense. And all such cases and cases of offenses by, or against the person of, a child under the age of sixteen years shall have preference over all other cases, before all magistrates and in all courts and tribunals in this state both civil and criminal; and where a child is committed or detained as a witness in any case such case shall be brought to trial or otherwise disposed of without delay, whether the defendant be in custody or enlarged on bail.

Derivation: Penal Code, § 291(7), added L. 1892, ch. 217, § 2, and amended L. 1896, ch. 410, § 1; L. 1903, ch. 331, § 1. For remainder of Penal *Code 291(7), see § 486, ante.*

§ 488. Sending messenger boys to certain places.

A corporation or person employing messenger boys who:

1. Knowingly places or permits to remain in a disorderly house, or in an unlicensed saloon, inn, tavern or other unlicensed place where malt or spirituous liquors or wines are sold, any instrument or device by which communication may be had between such disorderly house, saloon, inn, tavern or unlicensed place, and any office or place of business of such corporation or prison; or,

2. Knowingly sends or permits any person to send any messenger boy to any disorderly house, unlicensed saloon, inn, tavern, or other unlicensed place, where malt or spirituous liquors or wines are sold, on any errand or business whatsoever except to deliver telegrams at the door of such house,

Is guilty of a misdemeanor, and incurs a pentlty of fifty dollars to be recovered by the district attorney.

Derivation: Penal Code, § 292a, added L. 1893, ch. 692, § 2.

§ 489. Furnishing minors in reformatories with tobacco prohibited.

A person or officer who sells or gives any cigar, cigarette, snuff or tobacco in any of its forms to any minor undergoing confinement or sentence in any reformatory, penitentiary or house of refuge in this state is guilty of a misdemeanor.

Derivation: L. 1897, ch. 256, § 1.

§ 490. Duty of officers.

A constable or police officer must, and any agent or officer of any incorporated society for the prevention of cruelty to children may arrest and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of this article and any minor coming within any of the descriptions of children mentioned in section four hundred and eighty-five, four hundred and eighty-six, or in four hundred and eighty-seven. Such constable, police officer or agent may interfere to prevent the perpetration in his presence of any act fordidden by this article.

A person who obstructs or interferes with any officer or agent of such society in the exercise of his authority under this article is guilty of a misdemeanor.

Derivation: Part Penal Code, § 293, as amended L. 1888, ch. 415, § 7. For remainder of section, see § 491, *post*.

Regents of Univ. of Maryland v. Williams, 9 Gill & Johns. 388; Matter of

Corinne, Daily Reg., Dec. 16, 1881; People v. Strickland, 13 Abb. N. C. 473; Davis v. Society, etc., 16 Abb. Pr. (N. S.) 73; People ex rel. Newby v. N. Y. S. P. C. C., Daily Reg., Mar. 27, 1881; People ex rel. James v. N. Y. Society (1897), 19 Misc. 561, 44 N. Y. Supp. 1098, 12 N. Y. Cr. 86; People v. Angie (1902), 74 App. Div. 541, 77 N. Y. Supp. 832; People ex rel. State Board, etc., v. N. Y. Society, etc. (1899), 161 N. Y. 233, rev'g 42 App. Div. 83, 58 N. Y. Supp. 953; People ex rel. N. Y. S. P. C. C. v. Gilmore (1882), 88 N. Y. 626, rev'g 26 Hun, 1.

§ 491. Fines to be paid to society for prevention of cruelty to children.

All fines, penalties and forfeitures imposed or collected for a violation of the provisions of this chapter, or of any act relating to, or affecting children, now in force or hereafter passed, must be paid on demand to the incorporated society for the prevention of cruelty to children in every case where the prosecution shall be instituted or conducted by such a society; and any such payment heretofore made to any such society may be retained by it.

Derivation: Part of Penal Code, § 298, as amended L. 1888, ch. 415, § 1. For remainder of section, see § 490, *ante*.

See Penal Law, section 490.

§ 492. Concealing birth of a child.

A person who endeavors to conceal the birth of a child, by any disposition of the dead body of the child, whether the child died before or after its birth, is guilty of a misdemeanor.

Derivation: Penal Code, § 296.

§ 493. Taking apprentice without consent of guardian.

A person who takes an apprentice without having first obtained the consent of his legal guardian or unless a written agreement has been entered into as prescribed by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 292b, added L. 1893, ch. 692, § 2.

§ 494. Endangering morals of child; summons; probation; bond; jurisdiction.

1. A parent, guardian or other person having custody of a child actually or apparently under sixteen years of age, who omits to exercise reasonable diligence in the control of such child to prevent such child from becoming guilty of juvenile delinquency as defined by statute, or from becoming adjudged by a children's court in need of the care and protection of the state as defined by statute, or who permits such a child to associate with vicious, immoral or criminal persons, or to grow up in idleness, or to beg or solicit alms, or to wander about the streets of any city, town or village late at night without being in any lawful business or occupation, or to furnish entertainment for gain upon the streets or in any public place, or to be an habitual truant from school, or to habitually wander around any railroad yard or tracks, to enter any house of prostitution or assignation, or any place where gambling is carried on, or any gambling device is operated, or any policy shop, or to enter any place where the morals of such child may be endangered or depraved or may be likely to be impaired, and any such person or any other person who knowingly or wilfully is *responsible for,* encourages, aids, causes, or connives at, or who know-

ingly or wilfully does any act or acts to produce, promote or contribute to the conditions which cause such child to be adjudged guilty of juvenile delinquency, or to be in need of the care and protection of the state, or to do any of the acts hereinbefore enumerated, shall be guilty of a misdemeanor.

2. Any magistrate presiding over a court having the jurisdiction hereinafter conferred upon it may upon an oral or written complaint, or upon his own instance, when he has reason to believe that any parent or guardian or other person should be prosecuted under the provisions of this act, issue a summons directed to such parent, guardian or other person substantially as follows:

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To .....

You are hereby summoned to appear before ..... court at ..... to the end that an investigation may be made into the charge that you have contributed to or are responsible for ..... of .....,
(state charge) (name of child)
and upon your failure to appear at the time and place herein mentioned you are liable to a fine not exceeding twenty-five dollars.

Dated at ....., this ..... day of ....., 1910.

.....
(Signed by magistrate.)

Such summons may be served by a police officer or by any other person designated by the magistrate, and if the person summoned does not appear such failure to appear shall constitute contempt, and may be punishable by a fine not exceeding twenty-five dollars. The magistrate may issue subpœnas subject to the same penalties for disobedience thereof, or refusal to testify thereunder, as provided for in the code of civil procedure. Upon the return of the summons the magistrate shall inquire into the subject-matter of the charge. Whenever during the investigation the magistrate is satisfied from sworn testimony that there is sufficient cause for a warrant to issue, instead of issuing the warrant, if he deems it for the best interest of the person summoned and the state, upon the consent of the person summoned given in open court, the magistrate may adjourn the investigation from time to time for a period aggregating not more than one year and place the person summoned under the oversight of a probation officer during the adjournment, or may cause the person summoned to give a bond to the people of the state of New York, for not to exceed one year, with or without sureties, in such sum not to exceed two hundred and fifty dollars as he may direct. The probation officer cannot require the person so placed under his oversight to do more than to satisfy inquiries regarding the conduct or condition of the child, or regarding the conduct or condition of such person in so far as it relates to the conduct or condition of the child. The condition of such bond shall be that if the obligor shall exercise reasonable diligence during the time fixed in the bond, which cannot exceed the period of adjournment, to prevent a continuance or repetition of the condition, conduct, act, acts, offense or offenses of such child as was the special cause of the investigation and if charged with the custody of

the child also to exercise reasonable diligence in the discipline and control of such child, and appear in court from time to time as ordered, then the bond shall be void, otherwise in full force and effect. On the adjourned day the person summoned must appear in court and if the magistrate is satisfied that the person summoned has exercised reasonable diligence to prevent such continuance or repetition of the condition, conduct, act, acts, offense or offenses of such child, and if charged with the custody of the child has also exercised reasonable diligence in the discipline and control of such child during the period of adjournment he must dismiss the proceeding and cancel the bond, if any. If he is not so satisfied he must either issue the warrant, or upon the consent of the person summoned given in open court he must continue the adjournment, probationary oversight and bond, if any, but all of such adjournments cannot exceed one year from the date of the first adjournment. Nothing herein contained shall interfere with the right of a magistrate to issue the warrant in the first instance upon sworn information, or at the close of the investigation, and the magistrate who presides at the investigation, or his successor, may at any time during the adjournment, upon notice to the person summoned to appear and show cause, revoke and cancel the adjournment and issue the warrant.

3. Whenever a person is convicted of the misdemeanor hereinbefore defined and sentence is suspended the court may place the defendant upon probation for a period of not more than one year; provided that the court may cause the defendant to give a bond to the people of the state of New York, with or without sureties, in a sum not to exceed five hundred dollars. The condition of such bond shall be that if the obligor shall exercise reasonable diligence during the time fixed in the bond, which cannot exceed one year, to prevent a continuance or repetition of the condition, conduct, act, acts, offense or offenses of such child which was the cause of defendant's prosecution, and if charged with the custody of the child also to exercise reasonable diligence in the discipline and control of such child and appear in court from time to time as ordered, then such bond shall be null and void, otherwise in full force and effect. The magistrate who presided at the trial, or his successor, if he is satisfied that the defendant has violated the terms and conditions of probation and bond, if any, may at any time revoke and cancel the suspension of sentence and probation and impose sentence.

4. The prosecution of all bonds given during an adjournment of an investigation or after conviction herein shall be upon the order of the magistrate who presided at the investigation or trial, or his successor, and all money collected on such bonds shall in the discretion of such magistrate be deposited in the office of the county treasurer to be expended under the orders of the magistrate or his successor for the benefit of the child or children in whose interest such bond is given.

5. Original and exclusive jurisdiction of all proceedings, investigations and trials instituted under this act is limited to courts of special sessions, police and city courts presided over by magistrates who hold or are assigned to children's courts, except in the city of New York, *where the jurisdiction* is hereby conferred upon and shall be exercised *by the city magistrates.* (Added by L. 1910, ch. 699, in effect June *25, 1910.)*

ARTICLE 46.

CIVIL RIGHTS.

SECTION 510. Forfeiture of office and suspension of civil rights.
511. Consequence of sentence to imprisonment for life.
512. Forfeiture of property on conviction abolished.
513. Innkeepers and carriers refusing to receive guests and passengers.
514. Protecting civil and public rights.
515. Discrimination against person or class in price for admission.
516. Return of photographs of prisoners after unsuccessful prosecution of criminal action.
517. Discrimination against United States uniform.

§ 510. Forfeiture of office and suspension of civil rights.

A sentence of imprisonment in a state prison for any term less than for life, forfeits all the public offices, and suspends, during the term of the sentence, all the civil rights, and all private trusts, authority, or powers of, or held by, the person sentenced.

Derivation: Penal Code, § 707.

Bowles v. Haberman (1884), 95 N. Y. 246; Avery v. Everett (1888), 110 N. Y. 317, 6 Am. St. Rep. 386, 1 L. R. A. 264, aff'g 36 Hun, 6; People v. Meakim (1892), 133 N. Y. 214, aff'g 61 Hun, 327, 15 N. Y. Supp. 917, 8 N. Y. Cr. 308; La Chappelle v. Burpee (1893), 69 Hun, 436, 23 N. Y. Supp. 453; Matter of Guden (1902), 171 N. Y. 529, aff'g 71 App. Div. 422, rev'g 37 Misc. 398, 75 N. Y. Supp. 786; see also Miller v. Finkle, 1 Park Cr. 374; Davis v. Duffie, 8 Brosw. 617, 4 Abb. Pr. (N. S.) 478.

§ 511. Consequence of sentence to imprisonment for life.

A person sentenced to imprisonment for life is thereafter deemed civilly dead.

Derivation: Penal Code, § 708.

Avery v. Everett (1888), 110 N. Y. 317, 6 Am. St. Rep. 368, 1 L. R. A. 264, aff'g 36 Hun, 6; Trust Co. of America v. State Deposit Co. (1907), 187 N. Y. 178, 184, aff'g 109 App. Div. 665, 96 N. Y. Supp. 585; and see In re Donnelly's Estate (Cal.), 58 Pac. 61.

§ 512. Forfeiture of property on conviction abolished.

A conviction of a person for any crime does not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures to the people of the state, in the

nature of deodands, or in a case of suicide, or where a person flees from jutice, are abolished.

Derivation: Penal Code, § 710.

People v. Hawker (1897), 14 App. Div. 188, 43 N. Y. Supp. 516, rev'd 152 N. Y. 234, aff'd 170 U. S. 189.

§ 513. Innkeepers and carriers refusing to receive guests and passengers.

A person, who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

Derivation: Penal Code, § 381.

People v. Drum (1908), 127 App. Div. 242.

§ 514. Protecting civil and public rights.

A person who:

1. Excludes a citizen of this state, by reason of race, color or previous condition of servitude, from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement, or by teachers and officers of common schools and public institutions of learning, or by cemetery associations; or,

2. Denies or aids or incites another to deny to any other person because of race, creed or color, full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance on land or water, theatre or other place of public resort or amusement,

Is guilty of a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars.

Derivation: Penal Code, § 383, as amended L. 1893, ch. 692, § 1.

People v. King (1886), 110 N. Y. 420, 1 L. R. A. 293, 6 Am. St. Rep. 389, aff'g 42 Hun, 186; Stay v. Du Bois (1893), 74 Hun, 134, 26 N. Y. Supp. 240; Cremore v. Huber (1897), 18 App. Div. 231, 45 N. Y. Supp. 947; People ex rel. Cisco v. School Board (1899), 161 N. Y. 598, 48 L. R. A. 113, aff'g 44 App. Div. 469, 61 N. Y. Supp. 330; Burks v. Bosso (1903), 81 App. Div. 530, 81 N. Y. Supp. 384; People ex rel. Burnham v. Flynn (1907), 189 N. Y. 180, 21 N. Y. Cr. 451, 114 App. Div. 578, 100 N. Y. Supp. 31, rev'g 49 Misc. 328, 99 N. Y. Supp. 198.

§ 515. Discrimination against person or class in price for admission.

If a person who owns, occupies, manages or controls a building, park, inclosure or other place, opens the same to the public generally at stated periods or otherwise, he shall not discriminate against any person or class of persons in the price charged for admission thereto. A person violating the provisions of this section is guilty of a misdemeanor.

Derivation: Penal Code, § 383a, added L. 1899, ch. 724, § 1.

§ 516. Return of photographs of prisoners after unsuccessful prosecution of criminal action.

Upon the determination of a criminal action or proceeding against a person, in favor of such person, every photograph of such person and photographic plate or proof taken or made of such person while such action or proceeding is pending by direction or authority of any police officer, peace officer or any member of any police department, and all duplicates and copies thereof shall be returned on demand to such person by the police officer, peace officer or member of any police department having any such photograph, photographic plate or proof, copy or duplicate in his possession or under his control; and such police officer, peace officer or member of any police department failing to comply with the requirements hereof, shall be guilty of a misdemeanor.

Derivation: Penal Code, § 379a, added L. 1907, ch. 626, § 1.

People ex rel. Gow v. Bingham (1907), 57 Misc. 66, 107 N. Y. Supp. 1011, 21 N. Y. Cr. 566.

§ 517. Discrimination against United States uniform.

A person who excludes from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement or resort, any person lawfully wearing the uniform of the army, navy, marine corps or revenue cutter service of the United States, because of that uniform, is guilty of a misdemeanor. (Added by L. 1911, ch. 410, in effect Sept. 1, 1911.)

ARTICLE 48.

COERCION.

SECTION 530. Coercing another person a misdemeanor.
531. Coercion by employers.
532. Compelling woman to marry.
533. No conviction on certain testimony.

§ 530. Coercing another person a misdemeanor.

A person who with a view to compel another person to do or to abstain from doing an act which such other person has a legal right to do or to abstain from doing, wrongfully and unlawfully,

1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property or threatens such violence or injury; or,

2. Deprives any such person of any tool, implement or clothing or hinders him in the use thereof; or,

3. Uses or attempts the intimidation of such person by threats or force,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 653, as amended L. 1882, ch. 384, § 1.

People v. Lenhardt (1886), 4 N. Y. Cr. 317; see also People v. Crotty, 9 N. Y. Supp. 938.

§ 531. Coercion by employers.

Any person or employer of labor, and any person of any corporation on behalf of such corporation, who shall hereafter coerce or compel any person, employee, laborer or mechanic, to enter into an agreement, either written or verbal from such person, employee, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person securing employment, or continuing in the employment of any such person, employer or corporation, shall be deemed guilty of a misdemeanor.

The penalty for such misdemeanor shall be imprisoned in a penal institution for not more than six months, or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 171a, added L. 1887, ch. 688, § 1.

People v. Marcus (1906), 185 N. Y. 257, aff'g 110 App. Div. 225, 255, 256, 262, 97 N. Y. Supp. 322.

§ 532. Compelling woman to marry.

A person who by force, menace or duress, compels a woman against her will to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment for a term not exceeding ten years, or by a fine of not more than one thousand dollars, or by both.

Derivation: Penal Code, § 281, as amended L. 1892, ch. 662, § 11.

§ 533. No conviction on certain testimony.

No conviction can be had for compulsory marriage upon the testimony of the female compelled, unsupported by other evidence.

Derivation: Part of Penal Code, § 283, as amended L. 1886, ch. 663, § 1. For remainder of section, see Penal Law, §§ 71, 2013.

ARTICLE 50.

COMMUNICATION.

SECTION 550. Sending letter, when deemed complete.
551. Sending threatening letters.
552. Divulging contents of telegraphic or telephonic messages.
553. Opening or publishing a letter, telegram or private paper.

§ 550. Sending letter, when deemed complete.

In the various cases, in which the sending of a letter is made criminal by this chapter, the offense is deemed complete from the time when such letter is deposited in any post-office or other place, or delivered to any person, with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it is received by the person to whom it is addressed.

Derivation: Penal Code, § 683.

§ 551. Sending threatening letters.

A person who, knowing the contents thereof, sends, delivers, or in any manner causes to be sent or received any letter or other writing threatening to do any unlawful injury to the person or property of another, or any person who shall knowingly send or deliver or shall make and for the purpose of being delivered or sent, shall part with the possession of any letter, postal card or writing with or without a name subscribed thereto or signed with a fictitious name or with any letter, mark or other designation, with intent thereby to cause annoyance to any person, is guilty of misdemeanor.

Derivation: Penal Code, § 559, as amended L. 1891, ch. 120, § 1.

Foley v. Xavier (1905), 104 App. Div. 1, 2, 93 N. Y. Supp. 289; People v. Wickes (1906), 112 App. Div. 39, 98 N. Y. Supp. 163; Biggs v. People, 8 Barb. 547; People v. Cadman, 57 Cal. 562; see also Hartnett v. Plumbers' Supplies Assn., 169 Mass. 229; People v. Loveless, 29 N. Y. L. J. 365, 84 N. Y. Supp. 1115.

§ 552. Divulging contents of telegraphic or telephonic messages.

A person who:

1. Wrongfully obtains, or attempts to obtain, any knowledge of a telegraphic or a telephonic message by connivance with a clerk,

operator, messenger, or other employee of a telegraph or telephone company; or,

2. Being such clerk, operator, messenger or other employee, wilfully devulges to anyone but the persons for whom it was intended, the contents or the nature thereof of a telegraphic or telephonic message or dispatch intrusted to him for the transmission or delivery, or of which contents he may in any manner become possessed, or occupying such position in a telegraph office shall wilfully refuse or neglect duly to transmit or deliver messages received at such office, except when such telegraphic or telephonic message or dispatch is in aid of or used to abet or carry on any unlawful business or traffic, or to perpetrate any criminal offense, and when it shall appear that any offense at law or unlawful business or traffic is being carried on or conducted in whole or in part by means of a telegraphic or telephonic message or dispatch, it shall be the duty of any corporation or employee having knowledge of the same, to withhold such dispatch from delivery, and to further furnish to any public officer whose duty it is to prosecute any offense at law so aided and abetted, all information in their possession, relating to said unlawful business or traffic; and to further assist in the identification of any person aiding or abetting in or conducting any such unlawful business or traffic; and any violation of this section, or refusal or neglect to furnish information as provided hereinbefore, is punishable by a fine of not more than one thousand dollars or by imprisonment for not more than two years, or by both such fine and imprisonment.

Derivation: Penal Code, § 641, as amended L. 1895, ch. 727, § 1; L. 1901, ch. 661, § 1.

§ 553. Opening or publishing a letter, telegram or private paper.

A person who wilfully, and without authority:

1. Opens or reads, or causes to be opened or read, a sealed letter, telegram, or private paper; or,

2. Publishes the whole or any portion of such a letter, or telegram, or private paper, knowing it to have been opened or read without authority; or,

3. Takes a letter, telegram or private paper, belonging to another, or a copy thereof, and publishes the whole or any portion thereof; or,

4. Publishes the whole or any portion of such letter, telegram, or private paper, knowing it to have been taken or copied without authority; or,

5. Publishes or causes to be published, or connives at the publication of any letter, telegram, or private paper or of any portion of any letter, telegram, or private paper found on, or among the effects of, any person who has been dangerously wounded, or who has committed suicide, or who has died suddenly, or who has been found dead, unless such letter, telegram, or private paper shall have been produced pursuant to law before a coroner at an inquest, and the publication of such letter, telegram, or private paper, or of such portion of such letter, telegram, or private paper shall have been declared by that coroner in writing to be necessary to aid in the discovery of a crime, or of the identity of the wounded or deceased person; or,

6. Any person having or obtaining access, either with or without the consent of the lawful owner, to any original list, compilation or other collection of the names of customers or subscribers not less than five hundred in number, or to any other original list, compilation or other collection of names not less than five hundred in number, used in connection with any lawful business or occupation whatsoever, and who, without the consent of such lawful owner, shall take possession of any such original list, compilation, or other collection, or any part thereof, or shall make or cause to be made, or take possession of, a copy or duplication thereof, or of any part thereof, or who shall aid, abet or incite any other person to take or to copy or to cause to be copied or taken, any such list, compilation or collection, or any part thereof; or,

7. Any person who may have heretofore obtained or may hereafter obtain any such list, compilation or other collection specified in subdivision six hereof, or any part thereof, or any copy or duplication of such list, compilation or collection or any part thereof, or the information contained in any such list, compilation, collection or any part thereof, and who, without the consent of the lawful owner of the original of any such list, compilation or collection, and with notice or knowledge of his rights, may at any time hereafter, make use of or attempt to make use of any such list, compilation or collection, or any part thereof, or of any copy or duplication of the whole or any part thereof, or of the information contained in any such list, compilation, collection or

copy or duplication or any part thereof, for his own benefit or advantage, or that of any person other than said lawful owner,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 642, as amended L. 1895, ch. 287, § 1; L. 1900, ch. 588, § 1; L. 1905, ch. 441, § 1.

McCormack v. Perry (1888), 47 Hun, 72; Withop & Holmes Co. v. Boyce (1908), 61 Misc. 130; see also United States v. Hilbury, 29 Fed. 705.

ARTICLE 52.

COMPOUNDING CRIME.

SECTION 570. Punishment for compounding crime.
571. Conviction of primary offender not necessary.

§ 570. Punishment for compounding crime.

A person who takes money or other property, gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal a crime, or a violation of statute, or to abstain from, discontinue, or delay, a prosecution therefor, or to withhold any evidence thereof, except in a case where a compromise is allowed by law, is guilty:

1. Of a felony, punishable by imprisonment in a state prison for not more than five years, where the agreement or understanding relates to a felony punishable by death, or by imprisonment in a state prison for life;

2. Of a felony, punishable by imprisonment in a state prison for not more than three years, where the agreement or understanding relates to another felony;

3. Of a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or by fine of not more than two hundred and fifty dollars, or both, where the agreement or understanding relates to a misdemeanor, or to a violation of a statute for which a pecuniary penalty or forfeiture is prescribed.

Derivation: Penal Code, § 125.

Kissock v. House (1880), 23 Hun, 35, 36; Buck v. First National Bank, 27 Mich. 293; see also Daimouth v. Bennett, 15 Barb. 541; Conderman v. Trenchard, 58 Barb. 165; Conderman v. Hicks, 3 Lans. 108; People v. Bishop, 5 Wend. 111; Collins' Case, 4 C. H. Rec. 139; Gilmore's Case, 2 C. H. Rec. 29; Plumer v. Smith, 5 N. H. 553; McMahon v. Smith, 47 Conn. 221, 36 Am. Rep. 67; Pearce v. Wilson, 111 Pa. St. 14, 56 Am. Rep. 243; Jones v. Rice, 18 Pick. 440; Kier v. Lehman, 6 C. B. 308; Gardner v. Maxey, 9 B. Mon. 90; Peed v. McKee, 42 Iowa, 649; Kimbrough v. Lane, 11 Bush. (Ky.) 556; Clark v. Ricker, 14 N. H. 44; Shaw v. Spooner, 9 N. H. 197; Shaw v. Reed, 30 Me. 105; Bowen v. Buck, 28 Ct. 308; Hinesborough v. Summer, 9 Vt. 23; Com. v. Johnson, 3 Cush. 454; Fay v. Oatley, 6 Wis. 42; Halcomb v. Stimpson, 8 Vt. 141; Price v. Summers, 2 Southard, 578; Robinson v. Crenshaw, 2 Stew. & Port. 276; Maurer v. Mitchell, 9 Watts & Serg. 69; Bothwell v. Brown, 51 Ill. 234; Plumer v. Smith, 5 N. H. 553; Com. v. Pease, 16 Mass. 91; Bell v. Wood, 1 Bay (S. C.) 244; Hinesburg v. Summer, 9 Vt. 23; Reg. v. Burgess,

ARTICLE 54.

CONSPIRACY.

SECTION 580. Definition and punishment of conspiracy.
581. Conspiracies against peace of the state.
582. Punishable conspiracies.
583. Overt act, when necessary.

§ 580. Definition and punishment of conspiracy.

If two or more persons conspire:

1. To commit a crime; or,

2. Falsely and maliciously to indict another for a crime, or to procure another to be complained of or arrested for a crime; or,

3. Falsely to institute or maintain an action or special proceeding; or,

4. To cheat and defraud another out of property, by any means which are in themselves criminal, or which, if executed, would amount to a cheat, or to obtain money or any other property by false pretenses; or,

5. To prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use or employment thereof; or,

6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws,

Each of them is guilty of a misdemeanor.

Derivation: Penal Code, § 168.

Elkin v. People (1863), 28 N. Y. 177, 24 How. Pr. 272; Ormsby v. People (1873), 53 N. Y. 472; Kelley v. People (1874), 55 N. Y. 565, 14 Am. Rep. 342, aff'g 2 Th. & C. 157; People ex rel. Lawrence v. Brady (1874), 56 N. Y. 190; People v. Powell (1875), 63 N. Y. 88, aff'g 5 Hun, 169; Adams v. People (1876), 9 Hun, 89; People v. Lyon (1883), 1 N. Y. Cr. 400, 99 N. Y. 219; Buffalo Lubricating Oil Co. v. Everest (1883), 30 Hun, 586; People v. Murphy (1885), 3 N. Y. Cr. 339; People v. Bassford (1885), 3 N. Y. Cr. 219; People v. Wilzig (1886), 4 N. Y. Cr. 403; People v. Kostka (1886), 4 N. Y. Cr. 429; People v. Sharp (1887), 45 Hun, 460, 5 N. Y. Cr. 389, 469; People ex rel. Gill v. Smith (1887), 5 N. Y. Cr. 509; State v. Glidden (1887), 55 Conn. 46, 3 Am. St. Rep. 23, 6 N. Y. Cr. 321; People v. Pavlik (1888), 7 N. Y. Cr. 30, 3 N. Y. Supp. 232; People v. Squire (1888), 6 N. Y. Cr. 262, 20 Abb

N. C. 369; People ex rel. Gill v. Walsh (1888), 6 N. Y. Cr. 292; Crump v. Com. (1888), 84 Va. 927, 10 Am. St. Rep. 895, 6 N. Y. Cr. 342, 38 Alb. L. J. 4; Leonard v. Poole (1889), 114 N. Y. 377, aff'g 55 N. Y. Super. 213; People v. Everest (1889), 51 Hun, 19, 25, 3 N. Y. Supp. 612; People v. North River Sugar Refining Co. (sugar) (1889), 54 Hun, 354, aff'd 121 N. Y. 582, 3 N. Y. Supp. 401, 7 N. Y. 406; People v. Snaith (1890), 57 Hun, 334, 10 N. Y. Supp. 589; People v. Flack (1890), 125 N. Y. 324, 8 N. Y. Cr. 88, rev'g 57 Hun, 48, 10 N. Y. Supp. 275; Thomas v. Mut. Protective Union (1890), 121 N. Y. 50, rev'g 49 Hun, 171, 2 N. Y. Supp. 195; People v. Kief (1891), 126 N. Y. 661, aff'g 58 Hun, 337, 11 N. Y. Supp. 926, 12 N. Y. Supp. 896; Deuber Watch Case Co. v. Howard, etc., Co. (1893), 3 Misc. 585, 24 N. Y. Supp. 647; Reynolds v. Everett (1893), 67 Hun, 294, 22 N. Y. Supp. 306; People v. Sheldon (1893), 139 N. Y. 251, 36 Am. St. Rep. 690, 23 L. R. A. 221, aff'g 66 Hun, 590, 21 N. Y. Supp. 859; Drake v. Seibold (1894), 81 Hun, 178, 30 N. Y. Supp. 697; People v. McKane (1894), 7 Misc. 478, 28 N. Y. Supp. 397; Davis v. Zimmerman (1895), 91 Hun, 489, 36 N. Y. Supp. 303; People v. Duke (1897), 19 Misc. 294, 44 N. Y. Supp. 336; People v. Peckens (1897), 153 N. Y. 576, 12 N. Y. Cr. 433, aff'g 12 App. Div. 626, 43 N. Y. Supp. 1160; Matthews v. Shankland (1898), 25 Misc. 611, 56 N. Y. Supp. 123; People v. Van Tassel (1898), 156 N. Y. 561, aff'g 26 App. Div. 445, 50 N. Y. Supp. 53; People v. Willis (1899), 158 N. Y. 392, aff'g 34 App. Div. 203, 54 N. Y. S. 642; People v. Chandler (1900), 54 App. Div. 111, 15 N. Y. Cr. 165, 66 N. Y. Supp. 391; People v. Radt (1900), 15 N. Y. Cr. 174, 71 N. Y. Supp. 846; People v. Peterson (1901), 60 App. Div. 118, 15 N. Y. Cr. 421, 69 N. Y. Supp. 941; Nat. Protective Assoc. v. Cumming (1902), 170 N. Y. 315; People v. Goslin (1902), 67 App. Div. 18, 73 N. Y. Supp. 520, 6 N. Y. Cr. 257; Park & Sons Co. v. National Wholesale Druggists Assn. (1903), 175 N. Y. 1, aff'g 54 App. Div. 223, 64 N. Y. Supp. 276, 66 N. Y. Supp. 615; People v. Hummel 1906), 49 Misc. 136, 98 N. Y. Supp. 713, 20 N. Y. Cr. 240, 119 App. Div. 153, 105 N. Y. Supp. 869; People v. McFarlin (1904), 43 Misc. 591, 89 N. Y. Supp. 527, 18 N. Y. Cr. 414; People v. Weichers (1904), 94 App. Div. 19, 87 N. Y. Supp. 897, 18 N. Y. Cr. 351, aff'd 179 N. Y. 459; People v. Rathbun (1904), 44 Misc. 93, 89 N. Y. Supp. 746, 18 N. Y. Cr. 461; Kellogg v. Sowerby (1907), 190 N. Y. 370, rev'g 114 App. Div. 916, 100 N. Y. Supp. 1123; People ex rel. Burnham v. Flynn (1907), 189 N. Y. 180, rev'g 114 App. Div. 578, 49 Misc. 328, 99 N. Y. Supp. 198; People v. Klaw (1907), 55 Misc. 72, 106 N. Y. Supp. 341; Russell & Sons v. Stampers & G. L. L. U. No. 22 (1907), 57 Misc. 96, 107 N. Y. Supp. 303; People v. Miles (1908), 123 App. Div. 862, 108 N. Y. Supp. 510; see also People v. Barrett, 1 Johns. 66; People v. Chase, 16 Barb. 495; People v. Eckford, 7 Cow. 535; Emmanuel's Case, 6 City Hall Rec. 33; People v. Fisher, 14 Wend. 1, 28 Am. Dec. 509 note; Hitchcock's Case, 6 City Hall Rec. 43; Lambert v. People, 9 Cow. 578; Leggett v. Postley, 2 Paige, 599; Lewis' Case, 5 City Hall Rec. 129; Master Stevedores' Assn. v. Walsh, 2 Daly, 1, 13; People v. Mather, 4 Wend. 229; Johnson v. Meinhardt, 61 How. Pr. 168; People v. Melvin Yates, 2 Wheel Cr. Cas. 269, 6 City Hall Rec. 35; People v. Olcott, 2 Johns. Cas. 301; Old Dominion Co. v. McKenna, 18 Abb. N. C. 262; Robbins' Case, 4 City Hall Rec. 1; Storm's Case, 1 City Hall Rec. 169; People v. Trequeer, 1 Wheel. Cr. Cas. 142; State v. Setter, 54 Conn. 461, 41 Alb. L. J. 129, 14 Am. St. Rep. 121; Spies v. People, 122 Ill. 1, 3 Am. St. Rep. 320;

Carew v. Rutherford, 106 Mass. 1; Walter v. Cronin, 107 Mass. 555; People v. Richards, 1 Mich. 216, 51 Am. Dec. 75, 79, note; State v. Barnum, 15 N. H. 396; State v. Donaldson, 32 N. J. L. 151; State v. Stewart, 59 Vt. 273, 59 Am. Rep. 710; People v. Miller, 22 Pac. 934; Com. v. Hunt, 4 Metc. 111; Noyes v. State, 1 Crim. L. Mag. 215; Duprey's Mussel Slough Case, 5 Fed. 680; Reg. v. Rollins, 17 Ad. & El. (N. S.) 671; Slaughter-House Cases, 16 Wall. 36, 116; Bowen v. Hall, 2 Q. B. Div. 333, 337; Gregory v. Duke, etc., 6 M. & G. 205; Gunther v. Astor, 4 J. B. Moore, 12; Mogul Co. v. MacGregor, 15 Q. B. Div. 486; Rafael v. Verein, 2 W. Bl. 1055; Lumby v. Gage, 2 El. & Bl. 216; Reg. v. Bauld, 15 Eng. Rep. 316; Tarston v. McGalliter, Peake, 105.

§ 581. Conspiracies against peace of the state.

If two or more persons, being out of this state, conspire to commit any act against the peace of this state, the commission or attempted commission of which, within this state, would be treason against the state, they are punishable by imprisonment in a state prison not exceeding ten years.

Derivation: Penal Code, § 169.

People v. McFarlin (1904), 43 Misc. 593, 89 N. Y. Supp. 527, 18 N. Y. Cr. 414.

§ 582. Punishable conspiracies.

No conspiracy is punishable criminally unless it is one of those enumerated in the last two sections, and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade or handicraft for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, is not a conspiracy.

Derivation: Penal Code, § 170, as amended L. 1882, ch. 384, § 1.

People ex rel. Gill v. Walsh (1888), 6 N. Y. Cr. 292, aff'g 5 N. Y. Cr. 507; People v. Barondess (1891), 61 Hun, 577, 8 N. Y. Cr. 234, rev'd 133 N. Y. 649, 8 N. Y. Cr. 376, 16 N. Y. Supp. 436; Davis Machine Co. v. Robinson (1903), 41 Misc. 333, 84 N. Y. Supp. 837; People v. McFarlin (1904), 43 Misc. 594, 89 N. Y. Supp. 527, 18 N. Y. Cr. 414; Jacobs v. Cohen (1905), 183 N. Y. 212, rev'g 99 App. Div. 481, 90 N. Y. Supp. 854; see also Master Stevedores' Assn. v. Welsh, 2 Daly, 1; Rogers v. Evarts, 17 N. Y. Supp. 264; Zeigler v. Nolan, 2 City Ct. Rep. 54.

§ 583. Overt act, when necessary.

No agreement except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy,

unless some act beside such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

Derivation: Penal Code, § 171.

People v. Flack (1890), 125 N. Y. 324, 43 Alb. L. J. 64; People v. Brickner (1891), 8 N. Y. Cr. 217, 15 N. Y. Supp. 528; Reynolds v. Everett (1893), 67 Hun. 304, 22 N. Y. Supp. 306; People v. Sheldon (1893), 139 N. Y. 251, aff'g 66 Hun. 590, 21 N. Y. Supp. 859; People v. Willis (1899), 158 N. Y. 395, 14 N. Y. Cr. 72, aff'g 34 App. Div. 203, 54 N. Y. Supp. 642; People v. Peterson (1901), 60 App. Div. 120, 69 N. Y. Supp. 941; People v. Wiechers (1904), 94 App. Div. 19, 87 N. Y. Supp. 897, 18 Crim. Rep. 354, aff'd 179 N. Y. 459; People v. Rathbun (1904), 44 Misc. 91, 89 N. Y. Supp. 746, 18 Crim. Rep. 461; Green v. Davies (1905), 100 App. Div. 359, 91 N. Y. Supp. 470; People v. Summerfield (1905), 48 Misc. 246, 96 N. Y. Supp. 502, 19 Crim. Rep. 507; People ex rel. Burnham v. Flynn (1906), 114 App. Div. 580, 100 N. Y. Supp. 31; People v. Klaw (1907), 55 Misc. 72, 106 N. Y. Supp. 341, 21 Crim. Rep. 355; People v. Miles (1908), 123 App. Div. 873, 108 N. Y. Supp. 510; see also People v. Chase, 16 Barb. 495; People v. Murray, 95 N. Y. Supp. 107; People v. Squire, 20 Abb. N. C. 375.

§ 584. Witnesses' privileges.

No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court, magistrate, or referee, upon any investigation, proceeding or trial, for a violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or for forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation, proceeding or trial. (Added by L. 1910, ch. 395, in effect June 6, 1910.)

ARTICLE 56.

CONTEMPT OF COURT.

SECTION 600. Criminal contempt.
601. Punishment for criminal contempt.
602. Indictment for contempt.

§ 600. Criminal contempt.

A person who commits a contempt of court, of any one of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence and directly tending to interrupt its proceelings or to impair the respect due to its authority;

2. Behavior of the like character, committed in the presence of a referee or referees, while actually engaged in a trial or hearing, pursuant to the order of the court, or in the presence of a jury, while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law;

3. Breach of the peace, noise, or other disturbance, directly tending to interrupt the proceedings of a court, jury, or referee;

4. Wilful disobedience to the lawful process or other mandate of a court;

5. Resistance wilfully offered to its lawful process or other mandate;

6. Contumacious and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory;

7. Publication of a false or grossly inaccurate report of its proceedings. But no person can be punished as provided in this section, for publishing a true, full, and fair report of a trial, argument, decision, or other proceeding had in court.

Derivation: Penal Code, § 143.

Matter of Hackley (1861), 24 N. Y. 74, 12 Abb. 150, 21 How. 54; People v. Albany, etc., R. Co. (1862), 20 How. Pr. 358, aff'd 24 N. Y. 261, 37 Barb. 216; People v. Fancher (1874), 2 Hun, 226; Loop v. Gould (1879), 17 Hun, 585; People ex rel. Sherwin v. Mead (1882), 28 Hun, 227, 92 N. Y. 415; People v. Hovey (1883), 29 Hun, 382, 92 N. Y. 554; Sherwin v. People (1885), 100 N. Y. 351, 3 N. Y. Cr. 524; People ex rel. Munsell v. Oyer and Terminer

(1885), 101 N. Y. 245, 4 N. Y. Cr. 70, 3 How. Pr. (N. S.) 413, rev'g 36 Hun, 277; King v. Flynn (1885), 37 Hun, 329; People ex rel. Jones v. Davidson (1885), 35 Hun, 471; People v. Sharp (1887), 45 Hun, 493, 107 N. Y. 427; Matter of Choate (1890), 56 Hun, 351, 1 N. Y. Cr. 1, 41 Alb. L. J. 287; People v. Meakim (1892), 133 N. Y. 225, 8 N. Y. Cr. 414, 308, 15 N. Y. Supp. 917, 21 N. Y. Supp. 1103; People ex rel. Taylor v. Forbes (1894), 143 N. Y. 219, rev'g 77 Hun, 612, 28 N. Y. Supp. 1123; People ex rel. Barnes v. Ct. of Sess. (1895), 147 N. Y. 290, rev'g 82 Hun, 242, 31 N. Y. Supp. 373; People ex rel. Lewisohn v. O'Brien (1902), 39 Misc. 458, 80 N. Y. Supp. 198, rev'd 81 App. Div. 51, 80 N. Y. Supp. 816, aff'd 176 N. Y. 253; People ex rel. Lewisohn v. General Sessions (1904), 179 N. Y. 594, aff'g 96 App. Div. 201, 89 N. Y. Supp. 364; Chappell v. Chappell (1906), 116 App. Div. 574, 101 N. Y. Supp. 846; People v. Blake (1907), 121 App. Div. 619, 106 N. Y. Supp. 319; see also Weeks v. Smith, 3 Abb. Pr. 211; Conover v. Wood, 5 Abb. Pr. 84; People v. Marston, 18 Abb. Pr. 257; Bergh's Case, 16 Abb. Pr. (N. S.) 266; People v. Court of O. and T., 27 How. 14; Bowen v. Hunter, 45 How. 193; Clapp v. Lathrop, 23 How. Pr. 423; People ex rel. Valieste v. Dyckman, 24 How. Pr. 222; Clark v. Brooks, 26 How. Pr. 254; People v. Hefferman, 38 How. Pr. 402; Klungman's Case, 49 How. Pr. 484; Matter of Griffin, 1 N. Y. Supp. 7; Matter of Watson, 3 Lans. 408; Baker v. State, 82 Ga. 776, 14 Am. St. Rep. 192; Baker v. State, 4 L. R. A. 128, 11 Crim. L. Mag. 635; Bernard v. Leo, 7 Daily Reg. 1069, 1213; Bradley v. State, 111 Ga. 168, 36 S. E. 630, 50 L. R. A. 691, 78 Am. St. Rep. 157; Carter v. Com., 96 Va. 791, 32 S. E. 780, 45 L. R. A. 301; Cheadle v. State, 110 Ind. 301, 59 Am. Rep. 199; Matter of Cheeseman, 49 N. J. 137, 60 Am. Rep. 596; Cuddy's Case, 131 U. S. 33; State v. Frew, 24 W. Va. 416, 49 Am. Rep. 257; Matter of Gannon, 11 Pac. 240; Hale v. State, 55 Ohio St. 210, 45 N. E. 199, 36 L. R. A. 254, 60 Am. St. Rep. 691; Hill v. Crandall, 52 Ill. 70; Orman v. State, 24 Tex. App. 495; Matter of Percy, 2 Daly, 530; Matter of Savin, 131 U. S. 267; Sharon v. Hill, 24 Fed. 726; Smith v. Speed, 11 Okla. 95, 55 L. R. A. 402; Matter of Terry, 128 U. S. 289; Warner v. State, 12 Lea, 52; Watson v. People, 11 Colo. 4; Matter of Johnson, 20 Q. B. Div. 68, 38 Eng. Rep. 600; Plating Co. v. Farquharson, 17 Ch. Div. 49, 37 Eng. Rep. 163.

§ 601. Punishment for criminal contempt.

A criminal act is not the less punishable as a crime, because it is also declared to be punishable as a contempt of court.

Derivation: Penal Code, § 680.

People ex rel. Sherwin v. Mead (1883), 92 N. Y. 415, aff'g 28 Hun, 227; People ex rel. McDonald v. Keeler (1885), 99 N. Y. 475, rev'g 32 Hun, 563; People ex rel. Lewisohn v. Wyatt (1902), 39 Misc. 456, 80 N. Y. Supp. 198, rev'd 81 App. Div. 51, 80 N. Y. Supp. 816, aff'd 176 N. Y. 253; see also Eagan v. Lynch, 3 Civ. Pro. 236.

§ 602. Indictment for contempt.

Punishment for a contempt, as prescribed in article nineteen of the judiciary law, does not bar an indictment for the same offense; but where a person who has been so punished is convicted on such an indictment, the court, in sentencing him, must take into consideration the previous punishment.

Derivation: Code of Civil Proc., § 13.

ARTICLE 58

CONVICTION.

SECTION 610. Prisoner indicted may be convicted of lesser crime, or attempt.
611. No conviction on unsupported testimony in certain cases.

§ 610. Prisoner indicted may be convicted of lesser crime, or attempt.

Upon the trial of an indictment, the prisoner may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime.

Derivation: Penal Code, § 35.

People v. Thompson (1869), 41 N. Y. 1; Keefe v. People (1869), 40 N. Y. 348, 7 Abb. (N. S.) 76; Ruloff v. People (1871), 11 Abb. (N. S.) 245, 45 N. Y. 213, aff'g 5 Lans. 261; Murphy v. People (1874), 3 Hun, 114; Cox v. People (1880), 80 N. Y. 500, aff'g 19 Hun, 430; Sindram v. People (1882), 88 N. Y. 196, aff'd 1 N. Y. Cr. 448; People v. McTameney (1883), 30 Hun, 505, 1 N. Y. Cr. 437, 66 How. Pr. 70, 13 Abb. N. C. 55; People v. McDonnell (1883), 1 N. Y. Cr. 366, 92 N. Y. 657; People v. Petmecky (1884), 2 N. Y. Cr. 452; People v. Sullivan (1885), 4 N. Y. Cr. 193; People v. McCallam (1885), 3 N. Y. Cr. 189; People v. Palmer (1887), 5 N. Y. Cr. 101, 43 Hun, 406; People v. Dartmore (1888), 48 Hun, 321, 2 N. Y. Supp. 310; People v. Willson (1888), 109 N. Y. 347; People v. Giblin (1889), 115 N. Y. 196; People v. O'Connell (1891), 60 Hun, 113, 14 N. Y. Supp. 485; People ex rel. Young v. Stout (1894), 81 Hun, 336, 30 N. Y. Supp. 898; People v. Brockett (1895), 85 Hun, 138, 32 N. Y. Supp. 511; People v. Mills (1904), 91 App. Div. 333, 86 N. Y. Supp. 529, 18 N. Y. Cr. 127; People v. Jaffe (1906), 185 N. Y. 497, 19 N. Y. Cr. 281, rev'g 112 App. Div. 516, 98 N. Y. Supp. 486; Matter of Bartholomew (1907), 106 App. Div. 371, 374, 94 N. Y. Supp. 512, 19 N. Y. Cr. 570; People v. Stacey (1907), 119 App. Div. 743, 104 N. Y. Supp. 615; see also People v. Didieu, 17 How. Pr. 224; People v. Lawton, 56 Barb. 126; People v. Lohman, 2 Barb. 216; Nevins v. People, 61 Barb. 307; People v. Long, 2 Edm. Sel. Cas. 129.

§ 611. No conviction on unsupported testimony in certain cases.

[Repealed by L. 1909, ch. 524. In effect May 27, 1909. See §§ 71, 533, 2013, 2177.]

ARTICLE 60.

CONVICT MADE GOODS.

SECTION 620. Unlawful dealing in convict made goods.

§ 620. Unlawful dealing in convict made goods.

A person who:

1. Sells or exposes for sale convict made goods, wares or merchandise, without a license therefor, or having such license does not transmit to the secretary of state the statement required by article thirteen of the labor law; or,

2. Sells, offers for sale, or has in his possession for sale any such convict made goods, wares or merchandise without the brand, mark or label required by article thirteen of the labor law; or

3. Removes or defaces or in any way alters such brand, mark or label,

Is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not more than one thousand nor less than one hundred dollars, or by imprisonment for not less than ten days or by both such fine and imprisonment.

Derivation: Penal Code, § 384b, added L. 1893, ch. 692, § 2, and amended L. 1894, ch. 698, § 5; L. 1896, ch. 931, § 5; L. 1897, ch. 416, § 1.

People v. Hawkins (1898), 157 N. Y. 1, 42 L. R. A. 490, 68 Am. St. Rep. 736, aff'g 20 App. Div. 494, 47 N. Y. Supp. 56; People ex rel. Treat v. Coler (1901), 166 N. Y. 144, aff'g 56 App. Div. 459, 68 N. Y. Supp. 767; People v. Lochner (1903), 177 N. Y. 145, rev'd 197 U. S., aff'g 73 App. Div. 120, 76 N. Y. Supp. 396.

ARTICLE 62.

CONVICTS.

SECTION 640. Convict protected by law.
641. Importing foreign convict.
642. Master of vessel bringing foreign convict.
643. Creditor of convict.
644. Convict voting.

§ 640. Convict protected by law.

A convict sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not sentenced or convicted.

Derivation: Penal Code, § 709.
Alamango v. Supervisors (1881), 25 Hun, 551.

§ 641. Importing foreign convict.

An owner, master or commander of any vessel arriving from a foreign country, who knowingly lands or permits to land at any port, city, harbor, or place within this state, any passenger, seaman or other person who is a foreign convict of any crime which, if committed within this state, would be punishable therein, without giving notice thereof to the mayor of such city, or other principal municipal officer of such port or place, is guilty of a misdemeanor.

Derivation: Penal Code, § 153.

§ 642. Master of vessel bringing foreign convict.

A person, being the master or commander of any vessel, or boat, arriving from a foreign country, who knowingly brings into this state a person who has been, or is a foreign convict of any offense, which if committed in this state would be punishable therein, is guilty of a misdemeanor.

Derivation: Penal Code, § 440.

§ 643. Creditor of convict.

A person injured by the commission of a felony, for which the offender is sentenced to imprisonment in a state prison, is deemed

the creditor of the offender, and of his estate after his death, within the provisions of the statutes relating thereto.

The damages sustained by the person injured by the felonious act, may be ascertained in an action brought for that purpose by him against the trustees of the estate of the offender, appointed under the provisions of the statutes, or the executor or administrator of the offender's estate.

Derivation: Penal Code, §§ 716-717.

Mairs v. Railroad Co. (1903), 175 N. Y. 413, aff'g 73 App. Div. 265, 76 N. Y. Supp. 838.

§ 644. Convict voting.

The prohibition to vote at an election, contained in any statute of the state, shall not apply to a person heretofore or hereafter convicted of any crime, who has been sentenced or committed therefor to one of the houses of refuge, or other reformatories organized under the statutes of the state.

Derivation: Penal Code, § 711.

People v. Harrington (1884), 15 Abb. N. C. 163, 1 How. Pr. (N. S.) 37, 3 N. Y. Cr. 139, 141.

ARTICLE 64.

CORPORATIONS.

SECTION 660. Frauds in the organization of corporations.
661. Frauds in procuring organization of corporations.
662. Fraudulent issue of stocks and bonds.
663. Acting for foreign corporations not authorized to do business in this state.
664. Misconduct of officers and directors of stock corporations.
665. Misconduct of directors, officers, agents and employees of corporations.
666. Unlawful use of certain titles in connection with corporate name.
667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.
668. Misconduct at corporate elections.
669. Misconduct of officers and agents of pipe-line corporations.
670. Misconduct by officers and directors of life or casualty insurance corporations upon the co-operative or assessment plan or of fraternal beneficiary societies, orders or associations.

§ 660. Frauds in the organization of corporations.

A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose names is so subscribed is an officer, agent, member or promoter of such corporation or association; or,

2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or,

3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 590, as amended L. 1892, ch. 692, § 1.

§ 661. Frauds in procuring organization of corporations.

An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered

book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years.

Derivation: Penal Code, § 592, as amended L. 1892, ch. 662, § 20.

People v. Helmer (1898), 154 N. Y. 596, 13 N. Y. Cr. 1; People v. Hegeman (1907), 57 Misc. 295, 109 N. Y. Supp. 539.

§ 662. Fraudulent issue of stocks and bonds.

An officer, agent or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States or of any state or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud:

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledge or issue, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or,

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares,

Is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both.

Derivation: Penal Code, § 591, as amended L. 1892, ch. 662, § 19.

People v. Hegeman (1907), 57 Misc. 295, 109 N. Y. Supp. 539.

§ 663. Acting for foreign corporations not authorized to do business in this state.

Any person, or corporation, who:

1. Acts as agent or representative of any mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association organized outside of this state, while such mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association shall not be authorized under a license of the superintendent of banks to do business in this state; or,

2. Acts as agent or representative in this state of a foreign corporation, other than a moneyed corporation, with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," or any other words or terms indicating, representing or holding out such company to be a moneyed corporation as a part of its name or corporate title, or who, in connection with such corporation or otherwise, shall put forth any sign containing said name, or who shall advertise or publish the said company as doing business in this state, directly or indirectly, through agents or otherwise, while such company shall not be authorized under a certificate procured from the secretary of state pursuant to section fifteen of the general corporation law to do business in this state,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 593, as amended L. 1892, ch. 692, § 1; L. 1904, ch. 489, § 1; L. 1908, ch. 118.

§ 664. Misconduct of officers and directors of stock corporations.

A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended:

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or,

3. To discount or receive any note or other evidence of debt in payment of an instalment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or,

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock,

Is guilty of a misdemeanor.

An officer or director of a stock corporation who:

6. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

7. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share,

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

Derivation: Penal Code, § 594 and § 610, as amended L. 1892, ch. 692, § 1.

Berryman v. Bankers' Life Insurance Co. (1907), 117 App. Div. 737, 102 N. Y. Supp. 695.

§ **665. Misconduct of directors, officers, agents and employees of corporations.**

A director, officer, agent or employee of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Makes or concurs in making any false entry, or concurs in omitting to make any material entry in its books or accounts; or,

3. Knowingly (a), concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or (b), omits or concurs in omitting any statement required by law to be contained therein; or,

4. Having the custody or control of its books, wilfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected, and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; or,

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 611, as amended L. 1892, ch. 692, § 1; subds. 2 and 3, as amended L. 1906, ch. 286, §§ 1, 2; subd. 4, as amended L. 1893, ch. 692, § 1.

Davenport v. Prentice (1908), 126 App. Div. 458.

§ 666. Unlawful use of certain titles in connection with corporate name.

Any person, association or corporation, other than a moneyed corporation, who shall within this state directly or indirectly, or through agents or representatives transact business under, or in anywise use a corporate name or a corporate title with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," as a part of such name or title, is guilty of a misdemeanor; provided, however, that any domestic corporation, other than a moneyed corporation, heretofore duly organized and heretofore duly authorized by law to use and on April twenty-ninth, nineteen hundred and four, lawfully using either or any of such words as a part of its lawful corporate title, may lawfully continue to use such corporate title, provided and if it, being a corporation other than a moneyed corporation, shall wherever the name shall be printed, written, engraved or displayed, add, in legible English characters, of substantially the same size and style as the name, directly under the said name or immediately in connection therewith, wherever so used, the words "not a moneyed corporation."

Derivation: Penal Code, § 608, added L. 1904, ch. 489, § 2.

§ 667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.

It is no defense to a prosecution for a violation of the provisions of this article and article twenty-six, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

The term "director" as used in this article and article twenty-six includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this article and article twenty-six. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this article and article twenty-six occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record of minutes.

Derivation: Penal Code, § 614, as amended L. 1892, ch. 692, § 1.

§ 668. Misconduct at corporate elections.

Any person who:

1. Being entitled to vote at any meeting of the stockholders or bondholders or both of a stock corporation, sells his vote, or who issues a proxy to vote to any person for any sum of money or thing of value, except as expressly authorized by law; or,

2. Acts as an inspector of election at any such meeting and violates an oath taken by him in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 613, as amended L. 1892, ch. 692, § 1, subd. 2, as amended L. 1909, ch. 588, § 3

§ 669. Misconduct of officers and agents of pipe-line corporations.

Any officer, agent or manager of a pipe-line corporation who:

1. Neglects or refuses to transport any product delivered for transportation, or to accept and allow a delivery thereof in the order of application, according to the general rules of the corporation, as provided by law; or,

2. Charges, accepts or agrees to accept for such receipt, transportation and delivery, a sum different from the amount fixed by such regulations; or,

3. Allows or pays, or agrees to allow or pay, or suffers to be allowed or paid or repaid, any draw-back, rebate or allowance, so that any person shall, by any device, have or procure any transportation of products over such pipe-line at a less rate or charge than is fixed in such regulations,

Is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both.

Derivation: Penal Code, § 612, as amended L. 1892, ch. 692, § 1.

§ 670. Misconduct by officers and directors of life or casualty insurance corporations upon the co-operative or assessment plan or of fraternal beneficiary societies, orders or associations.

Any officer or director of a life or casualty insurance corporation upon the co-operative or assessment plan or of a fraternal beneficiary society, order or association, who shall sell his position as such officer or director for any money or valuable consideration, or who shall accept or receive, directly or indirectly, any money or valuable consideration for his resignation as such officer or director, shall be guilty of a felony if the money or valuable consideration accepted or received for the sale or resignation of such position as officer or director shall be more than five hundred dollars, and, if a less amount, shall be guilty of a misdemeanor. (Added by L. 1910, ch. 620, in effect June 24, 1910.)

ARTICLE 66.

CRIME AGAINST NATURE.

SECTION 690. Crime against nature; sodomy.
691. Penetration sufficient.

§ 690. Crime against nature; sodomy.

A person who carnally knows in any manner any animal or bird; or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body is guilty of sodomy and is punishable with imprisonment for not more than twenty years.

Derivation: Penal Code, § 303, as amended L. 1886, ch. 31, § 6; L. 1892, ch. 325, § 4.

People v. Deschessere (1898), 69 App. Div. 217, 16 N. Y. Cr. 340, 74 N. Y. Supp. 761; People v. Newman (1905), 100 App. Div. 437, 91 N. Y. Supp. 811; see also People v. Deschessere, Russ. & Ryan, 331, 29 Upp. Can. Q. B. 459; Reg. v. Brown, 24 Q. B. Div. 387.

§ 691. Penetration sufficient.

Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section.

Derivation: Penal Code, § 304.

ARTICLE 68.

DISGUISES.

SECTION 710. Disguised and masked persons; masquerades.
711. Allowing masquerades to be held in places of public resort.
712. Leaving state with intent to elude provisions of this article.
713. Witnesses' privilege.

§ 710. Disguised and masked persons; masquerades.

An assemblage in public houses or other places of three or more persons disguised by having their faces painted, discolored, colored or concealed, is unlawful, and every individual so disguised, present thereat, is guilty of a misdemeanor; but nothing contained in this section shall be construed as prohibiting any peaceful assemblage for a masquerade or fancy dress ball or entertainment, or any assemblage therefor of persons masked, or as prohibiting the wearing of masks, fancy dresses, or other disguise by persons on their way to or returning from such ball or other entertainment; if, when such masquerade, fancy dress ball or entertainment is held in any of the cities of this state, permission is first obtained from the police authorities in such cities respectively for the holding or giving thereof, under such regulations as may be prescribed by such police authorities.

Derivation: Penal Code, § 452.

§ 711. Allowing masquerades to be held in places of public resort.

A person being a proprietor, manager or keeper of a theatre, circus, public garden, public hall, or other place of public meeting, resort or amusement, for admission to which any price or payment is demanded, who permits therein any assemblage of persons masked, prohibited in this article, is guilty of a misdemeanor, punishable by imprisonment in a state prison not exceeding two years, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars and not less than one thousand dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 453.

§ **712. Leaving state with intent to elude provisions of this article.**

A person who leaves the state, with intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

Derivation: Penal Code, § 461.

§ **713. Witnesses' privilege.**

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

Derivation: Penal Code, § 469.

ARTICLE 70.

DISORDERLY CONDUCT.

SECTION 720. Disorderly conduct on public conveyances.
721. Eavesdropping.

§ 720. Disorderly conduct on public conveyances.

Any person who shall by any offensive or disorderly act or language, annoy or interfere with any person in any place or with the passengers of any public stage, railroad car, ferry boat, or other public conveyance, or who shall disturb or offend the occupants of such stage, car, boat or conveyance, by any disorderly act, language or display, although such act, conduct or display may not amount to an assault or battery, shall be deemed guilty of a misdemeanor.

Derivation: Part of Penal Code, § 675, as amended L. 1882, ch. 384, § 1; L. 1891, ch. 327, § 1. For remainder of section, see § 43, *ante*.

People v. Hislop (1879), 77 N. Y. 331; People ex rel. Clark v. Keeper (1903), 176 N. Y. 465, aff'g 80 App. Div. 448, 80 N. Y. Supp. 872; People ex rel. Smith v. Van de Carr (1903), 86 App. Div. 9, 83 N. Y. Supp. 245, 17 N. Y. Cr. 455; People v. St. Clair (1904), 90 App. Div. 239, 86 N. Y. Supp. 77; People v. Weiler (1904), 179 N. Y. 46, 31 N. Y. L. J. 1137, rev'g 89 App. Div. 611, 85 N. Y. Supp. 1140.

§ 721. Eavesdropping.

A person, who secretly loiters about a building, with intent to overhear discourse therein, and to repeat or publish the same to vex or annoy or injure others, is guilty of a misdemeanor.

Derivation: Penal Code, § 436.

ARTICLE 72.

DUELING.

SECTION 730. Challenge defined.
731. Dueling defined; punishment.
732. Challenger or abettor.
733. Attempts to induce a challenge.
734. Posting for not fighting.
735. Duel outside of state.
736. Where such person may be indicted and tried.
737. Witnesses.

§ 730. Challenge defined.

Any word, spoken or written, or any sign, uttered or made to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand, to fight a duel, or to meet for the purpose of fighting a duel, is deemed a challenge.

Derivation: Penal Code, § 236.

Barker v. People, 3 Cow. 686, 20 Johns. 457.

§ 731. Dueling defined; punishment.

A person who fights a duel, or engages in any combat with another, with deadly weapons, by previous agreement, or upon a previous quarrel, although no death or wound ensues, is punishable by imprisonment for a term not exceeding ten years. A person convicted under this section is thereafter incapable of holding, or of being elected or appointed to any office or place of trust or emolument, civil or military, within the state.

Derivation: Penal Code, § 234, as amended L. 1892, ch. 662, § 10.

§ 732. Challenger or abettor.

A person who challenges another to fight a duel, or who sends a written or verbal message, purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or who accepts such a challenge or message, or who knowingly carries or delivers such a challenge or message, or who is present at the time appointed for such a duel or combat, or when such a duel or combat is fought, either as second, aid, or surgeon, or who advises or abets, or gives any countenance or assistance

to such a duel or combat upon previous agreement, is punishable by imprisonment for not more than seven years.

Derivation: Penal Code, § 235.

§ **733. Attempts to induce a challenge.**

A person guilty of sending or using to another any word or sign whatever, with intent to provoke or induce such person to give or receive a challenge to fight a duel, is guilty of a misdemeanor.

Derivation: Penal Code, § 237.

§ **734. Posting for not fighting.**

A person who posts or advertises another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who, in writing or in print, uses reproachful or contemptuous language to or concerning any one, for not sending or accepting a challenge to fight a duel, or for not fighting a duel, is guilty of a misdemeanor.

Derivation: Penal Code, § 238.

§ **735. Duel outside of state.**

A person who leaves this state with intent to elude any provision of this article, or to commit any act without this state, which is prohibited by this article, or who, being a resident of this state, does any act without this state, which would be punishable by the provisions of this article, if committed within this state, is guilty of the same offense, and subject to the same punishment, as if the act had been committed, or was to have been consummated within this state.

Derivation: Penal Code, § 239.

§ **736. Where such person may be indicted and tried.**

A person offending against any provision of the last section may be indicted and tried in any county within this state; but the person so offending may plead a former conviction or acquittal in another state or country for the same offense, and if such plea is admitted or established, it shall be a bar to further proceedings against him, for such offense.

Derivation: Penal Code, § 240.

§ **737. Witnesses.**

A person offending against any provision of this article is a competent witness against any other person offending in the same transaction, and must not be excused from testifying or answering any question, upon an investigation or trial for an offense under this article, upon the ground that his testimony might tend to convict him of a crime. But evidence given by a person so testifying, can not be received against him, in any criminal action or proceeding.

Derivation: Penal Code, § 241.

ARTICLE 74.

ELECTIVE FRANCHISE.

SECTION 750. Definitions.
751. Misdemeanors at, or in connection with, political caucuses, primary elections, enrollment in political parties, committees, and conventions.
752. False registration.
753. Misconduct of registry officers.
754. Mutilation, destruction or loss of registry list.
755. Solicitation of money for newspaper support.
756. Misdemeanors concerning police commissioners or officers or members of any police force.
757. Failure of house-dweller to answer inquiries.
758. Removal, mutilation or destruction of election booths, supplies, poll-lists or cards of instruction.
759. Refusal to permit employees to attend election.
760. Misconduct in relation to certificates of nomination and official ballots.
761. Failure to deliver official ballots.
762. Misconduct of election officers and watchers.
763. Violation of election law by public officer.
764. Misdemeanors in relation to elections.
765. Illegal voting.
766. False returns.
767. Furnishing money or entertainment to induce attendance at polls.
768. Giving consideration for franchise.
769. Receiving consideration for franchise.
770. Testimony on prosecution.
771. Bribery or intimidation of elector in military service of United States.
772. Duress and intimidation of voters.
773. Conspiracy to promote or prevent election.
774. Political assessments.
775. Corrupt use of position or authority.
776. Failure to file candidate's statement of expenses.
777. Procuring fraudulent certificates in order to vote.
778. Presenting fraudulent certificates to registry boards to procure registration.
779. Soliciting from candidates.
780. Judicial candidates not to contribute.
781. Limitation of amounts to be expended by candidates.
782. Penalty.

§ 750. Definitions.

The words "election" or "town meeting," as used in any of the sections of this article, excepting section seven hundred and fifty-one, shall be deemed to apply to and include all general and special elections, municipal elections, town meetings, and primary elections and conventions, and proceedings for the nomination of candidates by petition under the election law. The word "candidate," as used in said sections, shall be deemed to apply to candidates for nomination at a primary election or convention, and candidates for any office to be voted for under the election law, as well as candidates for nomination by petition under the election law. (Amended by L. 1910, ch. 430, in effect June 8, 1910.)

Derivation: Penal Code, § 41zzz, added L. 1907, ch. 544, § 1.
People v. Foster (1908), 60 Misc. 7.

§ 751. Misdemeanors at, or in connection with, political caucuses, primary elections, enrollment in political parties, committees, and conventions.

Any person who:

1. At a political caucus, or at a primary election of a party, wilfully votes, or attempts to vote, without being entitled to do so, or votes, or attempts to vote on any other name than his own, or on the same day more than once on his own name; or,

2. Votes, or offers to vote, at a political caucus, or primary election of a party, having voted at the political caucus or primary election of any other political party on the same day, or being at the time enrolled in a party other than the party at whose primary he votes or offers to vote; or, who causes his name to be placed upon the rolls of a party organization of one party while his name is by his consent or procurement upon the rolls of a party organization of another party; or,

3. At a political caucus, or at a primary election, for the purpose of affecting the result thereof, votes or attempts to vote two or more ballots, or adds, or attempts to add, any ballot to those lawfully cast, by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or who adds to or mixes with, or attempts to add to or mix with, the ballots lawfully cast, another ballot or other ballots before the votes have been counted or canvassed, or while the votes are being counted or canvassed; or at any time abstracts any ballots lawfully cast, with intent to change the result of such election or to change the count thereat in favor of or against any person voted for at such election, or to prevent the ballots being recounted or used as evidence; or carries away, destroys, loses, conceals, detains, secretes, mutilates, or attempts to carry away, destroy, conceal, detain, secrete, or mutilate, any tally lists, ballots, ballot boxes, enrollment books, certificates of return, or any official docu-

ments provided for by the election law or otherwise by law, for the purpose of affecting or invalidating the result of such election, or of destroying evidence; or in any manner interferes with the officers holding any primary election or conducting the canvass of the votes cast thereat, or with voters lawfully exercising, or seeking to exercise, their right of voting at such primary election; or,

4. For the purpose of securing enrollment as a member of a political party, or for the purpose of being allowed to vote at a primary election as a member of a political party, makes and deposits or files, or makes or deposits or files with a board of primary inspectors, or with any public officer or board, a false declaration of party affiliation or wilfully makes a false declaration of residence, either by an enrollment blank or otherwise, or falsely answers any pertinent question asked him by the board of primary inspectors, or the board of election inspectors, or by a member thereof; or knowingly, on any day of registration or in the interval between any such day and the next ensuing day of general election, reveals or discloses the names or number of the enrolled electors of any party, or makes, publishes, or circulates a list of such names, or of any thereof, or does or permits any act by which the name of the party with which an elector has enrolled, or the number of electors enrolled with a party, may be disclosed; or,

5. Fraudulently or wrongfully does any act tending to affect the result of any election at a political caucus or of any primary election or convention; or,

6. Induces or attempts to induce any officer, teller, canvasser, poll clerk, primary election inspector, election inspector, custodian of primary records, or clerk or employee of or in the office of a custodian of primary records at a political caucus, or primary election, or convention, or while discharging any duty or performing any act required or made necessary by the election law, to do any act in violation of his duty, or in violation of the election law; or,

7. Directly or indirectly, by himself or through any other person, pays, or offers to pay, money or other valuable thing, or promises a place or position, or offers any other consideration or makes any other promise, to any person, to induce any voter to vote, or refrain from voting, at a political caucus, primary election, or convention, for or against any particular person; or does or offers to do, anything to hinder or delay any elector from taking part in or voting at, a political caucus, or at a primary election; or,

8. By menace or other unlawful or corrupt means, directly or indirectly, influences or attempts to influence, the vote of any person entitled to vote at a political caucus, primary election, or convention, or obstructs such person in voting, or prevents him from voting thereat; or,

9. Directly or indirectly, by himself or through any other person, receives money or other valuable thing, or a promise of a place or position, before, at, or after any political caucus, primary election, or convention, for voting or refraining from voting for or against any person, or for voting or refraining from voting at a political caucus, primary election, or convention; or,

10. Being an officer, teller, canvasser, primary inspector, at a political caucus, or at a primary election, knowingly permits any fraudulent vote to be cast, or knowingly receives and deposits in the ballot box any ballots offered by any person not qualified to vote; or permits the removal of ballots from the polling place before the close of the polls, or refuses to receive ballots intended for the electors of the district, or refuses to deliver to any elector ballots intended for the electors of the district which have been delivered to the board of inspectors, or permits electioneering within the polling place or within one hundred feet therefrom, or fails to keep order within the polling place, or permits any person other than the inspectors to accompany an elector into a voting booth, or enters the voting booth with any elector, except one entitled to receive assistance in the preparation of his ballot, or permits any person other than a voter, who has not voted, or watcher to come within the guard rail or removes or permits another to remove any mark placed upon a ballot for its identification; or,

11. Being an officer, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, election inspector, primary inspector, or poll clerk, knowingly puts opposite the name of an elector in an enrollment book any enrollment number other than the number opposite such name on the registration books of such district, or knowingly delivers to or receives from any elector on any day of registration an enrollment blank or envelope on which is any other enrollment number than that so opposite his name on such books of registration, or knowingly transcribes from an enrollment blank to the enrollment books any refusal to enroll or enrollment not indicated on the enrollment blank of the elector of such district whose enrollment number appears on the same, or refuses or wilfully neglects to

transcribe from any enrollment blank to the proper enrollment books any refusal to enroll or enrollment indicated on the enrollment blank of such an elector, enrolls or attempts to enroll as a member of a political party, upon any of the enrollment books, any person not qualified to enroll as such, or fraudulently enters thereupon the name of any person who has not enrolled as a member of any political party, or refuses or willfully neglects to enroll upon any of the enrollment books the name of any qualified person who has demanded to be enrolled as a member of a political party, or at any time strikes from any of the enrollment books the name of any person duly enrolled, or at any time adds to any of the enrollment books the name of any person not qualified to be enrolled as a member of a political party, or the name of any person who in fact has not enrolled as such; or makes marks upon, mutilates, carries away, conceals, alters, or destroys any enrollment blank or enrollment envelope used or deposited by an elector on a day of registration for the purpose of enrolling or refusing to enroll himself as a member of a political party; or mutilates, carries away, conceals, alters, or destroys, any statement or declaration made by a qualified voter for the purpose of enrolling as a member of a party; or, prior to the close of the last meeting for registration in any year, mutilates, carries away, conceals, alters, or destroys any enrollment blanks or enrollment envelopes not then delivered to electors; or,

12. Being an officer, teller, canvasser, election inspector, primary inspector, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, or any officer of a political committee or a convention, wilfully omits, refuses or neglects to do any act required by the election law or otherwise by law, or violates any of the provisions of the election law, or makes or attempts to make any false canvass of the ballots cast at a political caucus, primary election, or convention, or a false statement of the result of a canvass of the ballots cast thereat; or,

13. Being a custodian of primary records, or an officer of a political committee, or of a convention, who is charged with, or assumes, the duty of making up the preliminary roll of any convention, wilfully includes in such roll the name of any person not certified to be elected thereto in accordance with the provisions of law, or who wilfully omits from such roll the name of any person who is so certified to be a delegate to such convention,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 41 (original), repealed L. 1890, ch. 94, § 2;

new § 41, added L. 1890, ch. 94, § 1, and amended L. 1892, ch. 693, § 1; L. 1895, ch. 721, § 1; L. 1897, ch. 255, § 1; L. 1898, ch. 197, § 1; L. 1899, ch. 530, § 1; subds. 2, 6, as amended L. 1905, ch. 625, §§ 1, 2; subd. 10, as amended L. 1901, ch. 371, § 1.

People v. Cleary (1895), 13 Misc. 552, 35 N. Y. Supp. 588; People v. England (1895), 91 Hun, 152, 11 N. Y. Cr. 156, 36 N. Y. Supp. 534; People v. Jackson (1901), 36 Misc. 286, 73 N. Y. Supp. 461; People v. Foster et al. (1908), 60 Misc. 7.

§ 752. (Am'd, 1909.) False registration.

Any person who:

1. Registers or attempts to register as an elector in more than one election district for the same election, or more than once in the same election district; or,

2. Registers or attempts to register as an elector, knowing that he will not be a qualified voter in the district at the election for which such registration is made; or,

3. Registers or attempts to register as an elector under any other name than his own; or,

4. Knowingly gives a false residence within the election district when registering as an elector; or,

5. Knowingly permits, aids, assists, abets, procures, commands or advises another to commit any such act,

Is guilty of a felony, punishable by imprisonment in a state prison for not more than five years.

Derivation: Penal Code, § 41a, added L. 1890, ch. 94, § 1, amended L. 1892, ch. 693, § 1; L. 1897, ch. 255, § 1; L. 1901, ch. 371, § 2; L. 1905, ch. 625, § 3. Am'd by L. 1909, ch. 306. In effect Sept. 1, 1909.

People v. Acritelli (1908), 57 Misc. 574, 110 N. Y. Supp. 430.

§ 753. Misconduct of registry officers.

Any member or clerk of a registry board who wilfully violates any provision of the election law relative to the registration of electors or wilfully neglects or refuses to perform any duty imposed on him by law, or is guilty of any fraud in the execution of the duties of his office, is guilty of a felony, punishable by imprisonment for not more than ten years.

Derivation: Penal Code, § 41c, added L. 1890, ch. 94, § 1, and amended L. 1892, ch. 693, § 1; L. 1893, ch. 692, § 1; re-numbered § 41aa and amended L. 1905, ch. 625, § 4.

People v. McKane (1894), 143 N. Y. 455, aff'g 80 Hun, 322; McAvoy v. **Press Publishing Co.** (1906), 114 App. Div. 545, 99 N. Y. Supp. 1041.

§ 754. Mutilation, destruction or loss of registry list.

Any person who wilfully loses, alters, destroys or mutilates the list or register of voters in any election district, or a certified copy thereof, or removes from the place of registration the public copy of such registration, after the making of the same and before the closing of the polls of the election for which the same is made, is guilty of a misdemeanor.

Derivation: Penal Code, § 41b, added L. 1890, ch. 94, § 1, as amended L. 1892, ch. 693, § 1; L. 1905, ch. 625, § 5.

§ 755. Solicitation of money for newspaper support.

Any person who solicits from a candidate for an elective office money or other property as a consideration for a newspaper or other publication supporting any candidate for an elective office, is guilty of a misdemeanor.

Derivation: Penal Code, § 41bb, added L. 1900, ch. 70, § 1.

§ 756. Misdemeanors concerning police commissioners or officers or members of any police force.

Any person who, being a police commissioner or an officer or member of any police force in this state:

1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or,

2. Appoints, promotes, transfers, retires or punishes an officer or member of a police force, or asks for or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force, because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization, association or society, or of any officer, member of committee or representative official or otherwise of any political party, organization, association or society; or,

3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 41aa, added L. 1899, ch. 529, § 1; re-numbered § 41c, L. 1905, ch. 625, § 4.

People ex rel. McShane v. Hagen (1900), 48 App. Div. 204, aff'd 164 N. Y. 570, 62 N. Y. Supp. 816; McAvoy v. Press Publishing Co. (1906), 114 App. Div. 545, 99 N. Y. Supp. 1041.

§ 757. Failure of house-dweller to answer inquiries.

Any person dwelling in a building in a city who wilfully refuses to truly answer any question or who shall give false answers to any questions asked by any elector of such city, between the first meeting of the boards of registry therein for any election and the closing of the polls at such election, relating to the residence and qualifications as a voter of any person dwelling in such building, or of any person who appears upon the list or registry of voters made by a board of registry as residing at such building, or who knowingly harbors or conceals any person who has falsely registered as a voter, or who shall rent any room or bed to any person to be used by such person for himself or any other person for the purpose of unlawfully registering or voting therefrom is guilty of a misdemeanor.

Derivation: Penal Code, § 41d, added L. 1890, ch. 94, § 1, amended L. 1892, ch. 693, § 1; L. 1901, ch. 371, § 3; L. 1905, ch. 625, § 6.

People ex rel. Perry v. Hagan (1898), 13 N. Y. Cr. 418, 54 N. Y. Supp. 826; People v. Acritelli (1908), 57 Misc. 574, 110 N. Y. Supp. 430.

§ 758. Removal, mutilation or destruction of election booths, supplies, poll-lists or cards of instruction.

Any person who:

1. During an election or town meeting, wilfully defaces or injures a voting booth or compartment, or wilfully removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments in pursuance of law; or,

2. Before the closing of the polls, wilfully defaces or destroys any list of candidates to be voted for at such election or town meeting, posted in accordance with the election law; or,

3. During an election or town meeting, wilfully removes or defaces the cards for the instruction of voters, posted in accordance with the election law,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 41e, added L. 1890, ch. 94, § 1; amended L. 1892, ch. 693, § 1; L. 1894, ch. 714, § 1.

§ 759. Refusal to permit employees to attend election.

A person or corporation who refuses to an employee entitled to vote at an election or town meeting, the privilege of attending thereat, as provded by the election law, or subjects such employee to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

Derivation: Penal Code, § 41f, added L. 1890, ch. 94, § 1, amended L. 1892, ch. 693, § 1.

§ 760. Misconduct in relation to certificates of nomination and official ballots.

A person who:

1. Falsely makes or makes oath to, or fraudulently defaces or destroys, a certificate of nomination or any part thereof; or,

2. Files or receives for filing a certificate of nomination, knowing that any part thereof was falsely made; or,

3. Suppresses a certificate of nomination which has been duly filed, or any part thereof; or,

4. Forges or falsely makes the official indorsement of any ballot; or,

5. Having charge of official ballots, destroys, conceals or suppresses them, except as provided by law,

Is punishable by imprisonment for not more than five years.

Derivation: Penal Code, § 41g, added L. 1890, ch. 94, § 1, amended L. 1892, ch. 693, § 1; L. 1905, ch. 625, § 7.

§ 761. Failure to deliver official ballots.

Any person who has undertaken to deliver official ballots to any city, town or village clerk, or inspector, as authorized by the election law, and neglects or refuses to do so, is guilty of a misdemeanor.

Derivation: Penal Code, § 41h, added L. 1892, ch. 693, § 1.

§ 762. Misconduct of election officers and watchers.

Any election officer or watcher who:

1. Reveals to another person the name of any candidate for whom a voter has voted; or,

2. Communicates to another person his opinion, belief or impression as to how or for whom a voter has voted; or,

3. Places a mark upon a ballot, or does any other act by which

one ballot can be distinguished from another, or can be identified; or,

4. Before the closing of the polls, unfolds a ballot which a voter has prepared for voting,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 41i, added L. 1892, ch. 693, § 1, as amended L. 1894, ch. 714, § 2; L. 1905, ch. 625, § 8.

§ 763. Violation of election law by public officer.

A public officer who omits, refuses or neglects to perform any act required of him by the election law, or refuses to permit the doing of any act authorized thereby, is, if not otherwise provided by law, punishable by imprisonment for not more than three years, or by a fine of not more than three thousand dollars, or both.

Derivation: Penal Code, § 41j, added L. 1892, ch. 693, § 1.

People v. Gleason (1896), 18 Misc. 511, 12 N. Y. Cr. 192, 42 N. Y. Supp. 1084; Matter of Hearst (1905), 110 App. Div. 346, 96 N. Y. Supp. 341.

§ 764. Misdemeanor in relation to elections.

Any person who:

1. Acts as an inspector of election, poll clerk or ballot clerk, without being able to read and write the English language, or without being otherwise qualified to hold such office; or,

2. Being an inspector of election, knowingly and wilfully permits or suffers any person to vote who is not entitled to vote thereat; or,

3. Wilfully and unlawfully obstructs, hinders or delays, or aids or assists in obstructing or delaying any elector on his way to a registration or polling place, or while he is attempting to register or vote; or,

4. Electioneers on election day within a polling place, or in any public street or in a building or room, unless such building or room has been maintained for such purpose for at least six months previous to said election day, or in any public manner within one hundred feet of a polling place; or displays any political poster or placard, except those lawfully provided, in or upon any building used for registration or election purposes during any day for registration or election; or,

5. Removes any official ballot from a polling place before the closing of the polls; or,

6. Unlawfully goes within the guard-rail of any polling place or unlawfully remains within such guard-rail after having been commanded to remove therefrom by any inspector of election; or,

7. Enters a voting booth with any voter or remains in a voting booth while it is occupied by any voter, or opens the door of a voting booth when the same is occupied by a voter, with the intent to watch such voter while engaged in the preparation of his ballot, except as authorized by the election law; or,

8. Being or claiming to be a voter, permits any other person to be in a voting booth with him while engaged in the preparation of his ballot, except as authorized by the election law, without openly protesting against and asking that such person be ejected; or,

9. Having lawfully entered a voting booth with a voter, requests, persuades or induces such voter to vote any particular ballot or for any particular candidate, or, directly or indirectly, reveals to another the name of any candidate voted for by such voter, or anything occurring within such booth; or,

10. Shows his ballot after it is prepared for voting, to any person so as to reveal the contents, or solicits a voter to show the same; or,

11. Places any mark upon his ballot, or does any other act in connection with his ballot with the intent that it may be identified as the one voted by him; or,

12. Places any mark upon, or does any other act in connection with, a ballot or paster ballot, with the intent that it may afterwards be identified as having been voted by any particular person; or,

13. Receives an official ballot from any person other than one of the ballot clerks having charge of the ballots; or,

14. Not being a ballot clerk, delivers an official ballot to a voter; or,

15. Not being an inspector of election, receives from any voter a ballot prepared for voting; or,

16. Fails to return to the ballot clerks, before leaving the polling place or going outside the guard-rail, each ballot not voted by him; or,

17. Wilfully defaces, injures, mutilates, destroys or secretes any voting machine which belongs to any municipality for use at elections, and any person who commits or attempts to commit a fraud in the use of any such voting machine during an election; or,

18. Wilfully disobeys any lawful command of the board of inspectors, or any member thereof,

Is guilty of a misdemeanor.

This section shall apply to general and special elections, municipal elections and town meetings, but nothing therein shall prevent any person from receiving or delivering an unofficial sample ballot, or from receiving, delivering and voting an unofficial ballot as authorized by the election law.

Derivation: Penal Code, § 41k, added L. 1892, ch. 693, § 1; subd. 18, added L. 1893, ch. 692, § 2; amended L. 1894, ch. 714, § 3; subd. 4, amended L. 1896, ch. 549, § 1, and L. 1905, ch. 625, § 9; subd. 17, added L. 1899, ch. 265, § 1; subd. 17, re-numbered 18, L. 1899, ch. 265, § 2.

People v. Pillion (1894), 78 Hun, 74, 29 N. Y. Supp. 267; People v. Cleary (1895), 13 Misc. 552, 35 N. Y. Supp. 588; People v. Hochstim (1902), 76 App. Div. 28, 78 N. Y. Supp. 638, 986; People ex rel. Borgia v. Doe (1905), 109 App. Div. 673, 96 N. Y. Supp. 389.

§ **765. Illegal voting.**

Any person who:

1. Knowingly votes or offers or attempts to vote at any election, or town meeting, when not qualified; or,

2. Procures, aids, assists, counsels or advises any person to go or come into any town, ward or election district, for the purpose of voting at any election, or town meeting, knowing that such person is not qualified; or,

3. Votes or offers or attempts to vote at an election, or town meeting more than once; or votes or offers or attempts to vote at an election, or town meeting under any other name than his own; or votes or offers or attempts to vote at an election, or town meeting in an election district or from a place where he does not reside; or,

4. Procures, aids, assists, commands or advises another to vote or offer or attempt to vote at an election, or town meeting, knowing that such person is not qualified to vote thereat; or,

5. Being an inhabitant of another state or county, votes or offers or attempts to vote at an election, or town meeting in this state or permits, aids, assists, abets, procures, commands or advises another to commit or attempt any act named in this section,

Is guilty of felony, punishable by imprisonment in a state prison for not more than five years.

An offer or attempt under this section shall be deemed to be the doing of any act made necessary by the election law pre-

liminary to the delivery of a ballot to an elector or the deposit of the ballot in the ballot box.

Derivation: Penal Code, § 41m, added L. 1892, ch. 693, § 1, as amended L. 1894, ch. 77, § 2; L. 1894, ch. 282, § 1; re-numbered § 41-1 and amended L. 1901, ch. 371, § 5; L. 1905, ch. 625, § 10.

People ex rel. McShane v. Hagen (1900), 48 App. Div. 204, aff'd 164 N. Y. 570, 62 N. Y. Supp. 816; People v. Gagliardi (1908), 59 Misc. 653, 111 N. Y. Supp. 395; People v. Fabian (1908), 192 N. Y. 446, 126 App. Div. 91.

§ 766. False returns.

An inspector or poll clerk of an election or town meeting, who intentionally makes, or attempts to make, a false canvass of the ballots cast thereat, or any false statement of the result of a canvass, though not signed by a majority of the inspectors, or any person who induces or attempts to induce any such inspector or clerk so to do, is guilty of a felony.

Derivation: Penal Code, § 41n, added L. 1892, ch. 693, § 1; re-numbered § 41m, L. 1901, ch. 371, § 6.

Matter of Hearst (1905), 110 App. Div. 346, 350, 96 N. Y. Supp. 341; People v. Foster (1908), 60 Misc. 7.

§ 767. Furnishing money or entertainment to induce attendance at polls.

Any person who directly or indirectly by himself or through any other person in connection with or in respect of any election:

1. Gives or provides, or causes to be given or provided, or shall pay for wholly or in part, any meat, drink, tobacco, refreshment or provision, to or for any person, other than as part of the traveling expenses of candidates, political agents, committees and public speakers; or,

2. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration, for any other purpose than the following matters and services at their reasonable, bona fide and customary value is guilty of a misdemeanor: Rent of halls and compensation of speakers, music and fireworks for public meetings, and expenses of advertising the same, together with the usual and minor expenses incident thereto; the preparation, printing and publication of posters, lithographs, banners, notices and literary material; the compensation of agents to supervise and prepare articles and advertisements in the newspapers, to examine questions of public interest bearing on the

election, and report on the same; the pay of newspapers for advertisements, pictures, reading matter and additional circulation, the preparation and circulation of circular letters, pamphlets and literature bearing on the election; rent of offices and club rooms, compensation of such clerks and agents as shall be required to manage the necessary and reasonable business of the election and of attorneys at law for actual legal services rendered in connection with the election; the preparation of lists of voters, payment of necessary personal expenses by a candidate; the reasonable traveling expenses of the committeemen, agents, clerks and speakers, postage, express, telegrams and telephones; the expenses of preparing, circulating and filing a petition for nomination; compensation of poll workers or watchers, and food for the same, and election officers, hiring of carriages for conveying electors to the polls not exceeding three carriages for each election district in a city and not exceeding six carriages in any other election district; and the actual necessary railroad traveling expenses for transportation of voters to and from their places of residence for the purpose of voting.

Derivation: Penal Code, § 41-o, added L. 1892, ch. 693, § 1, amended L. 1895, ch. 885, § 1; re-numbered § 41n, L. 1901, ch. 371, § 6, amended L. 1906, ch. 503, § 1; L. 1907, ch. 398, § 1.

Smith v. Babcock (1896), 3 App. Div. 9, 37 N. Y. Supp. 965; People ex rel. Perkins v. Moss (1906), 113 App. Div. 329, 99 N. Y. Supp. 138, aff'd 187 N. Y. 410.

§ 768. Giving consideration for franchise.

Any person who directly or indirectly, by himself or through any other peson:

1. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election for any particular person or persons, or for or against any particular proposition submitted to voters, or to induce such voter to come to the polls or remain away from the polls at such election, or to induce such voter or other person to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such voter or other person having voted or refrained

from voting or having voted or refrained from voting for or against any particular person or for or against any proposition submitted to voters, or having come to the polls or remained away from the polls at such election, or having placed or caused to be placed or refrained from placing or causing to be placed his or any other name upon the registry of voters; or,

2. Gives, offers or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter or other person to vote or refain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election, for or against any particular person or for or against any proposition submitted to voters, or to induce any voter or other person to place or cause to be placed or refrain from placing or causing to be placed his or any other name upon a registry of voters; or,

3. Gives, offers or promises any office, place, employment or valuable thing as an inducement for any voter or other person to procure or aid in procuring either a large or a small vote, plurality or majority at any election district or other political division of the state, for a candidate or candidates to be voted for at an election; or to cause a larger or smaller vote, plurality or majority to be cast or given for any candidate or candidates in one such district or political division than in another; or,

4. Makes any gift, loan, promise, offer, procurement or agreement as aforesaid to, for or with any person to induce such person to procure or endeavor to procure the election of any person or the vote of any voter at any election; or,

5. Procures or engages or promises or endeavors to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement the election of any person, or the vote of any voter, at such election; or,

6. Advances or pays or causes to be paid, any money or other valuable thing, to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election, or knowingly pays or causes to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part expended in bribery at any election,

Is guilty of a felony, punishable by imprisonment for not more than five years, and in addition forfeits any office to which he may have been elected at the election with reference to which

such offense was committed, and becomes incapable of holding any public office under the constitution and laws of the state for a period of five years after such conviction.

Derivation: Penal Code, § 41p, added L. 1892, ch. 693, § 1, amended L. 1894, ch. 714, § 5; re-numbered § 41-o, amended L. 1901, ch. 371, § 7; L. 1905, ch. 625, § 11.

§ 769. Receiving consideration for franchise.

Any person who, directly or indirectly, by himself or through any other person:

1. Receives, agrees or contracts for, before or during an election, any money, gift, loan or other valuable consideration, office, place or employment for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from registering as a voter, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or for refraining or agreeing to refrain from voting for or against any particular person or persons at any election, or for or against any proposition submitted to voters at such election; or,

2. Receives any money or other valuable thing during or after an election on account of himself or any other person having voted or refrained from voting at such an election, or having registered or refrained from registering as a voter, or on account of himself or any other person having voted or refrained from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or having registered or refrained from registering as a voter, or on account of having induced any other person to vote or refrain from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election,

Is guilty of a felony, and in addition shall be excluded from tthe right of suffrage for five years after such conviction.

The county clerk of the county in which such person is convicted shall transmit a certified copy of the record of conviction to the clerk of each county of the state, within ten days thereafter, which copy shall be filed in his office by each of said clerks.

Derivation: Penal Code, § 41q, added L. 1892, ch. 693, § 1; amended L.

1894, ch. 714, § 5; re-numbered, § 41p and amended L. 1901, ch. 371, § 8; L. 1905, ch. 625, § 12.

Van Ingen v. Star Co. (1896), 1 App. Div. 431, aff'd 157 N. Y. 695, 37 N. Y. Supp. 114.

§ 770. Testimony on prosecution.

A person offending against any section of this article is a competent witness against another person so offending and may be compelled to attend and testify on any trial, hearing or proceeding or investigation in the same manner as any other person. The testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person testifying. Any such person testifying shall not thereafter be liable to indictment, prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

Derivation: Penal Code, § 41r, added L. 1892, ch. 693, § 1; amended L. 1893, ch. 692, § 1; renumbered § 41q and amended L. 1901, ch. 371, § 9.

People v. Lewis (1895), 14 Misc. 264, 11 N. Y. Cr. 212, 35 N. Y. Supp. 664; People v. Acritelli (1908), 57 Misc. 582, 110 N. Y. Supp. 430; People v. Cahill (1908), 193 N. Y. 239, aff'g 126 App. Div. 394.

§ 771. Bribery or intimidation of elector in military service of United States.

Any person who, directly or indirectly, by bribery, menace or other corrupt means, controls or attempts to control an elector of this state enlisted in the military service of the United States, in the exercise of his rights under the election law, or annoys, injures or punishes him for the manner in which he exercises such right, is guilty of a misdemeanor for which he may be tried at any future time when he may be found within this state; and upon conviction thereof shall thereafter be ineligible to any office therein.

Derivation: Penal Code, § 41s, added L. 1892, ch. 693, § 1; re-numbered § 41r, L. 1901, ch. 371, § 10.

§ 772. Duress and intimidation of voters.

Any person or corporation who directly or indirectly:

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person

to vote or refrain from voting at any election or to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or,

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or,

3. Being an employer pays his employees the salary or wages due in "pay envelopes," upon which there is written or printed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his employees are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees,

Is guilty of a misdemeanor, and if a corporation shall in addition forfeit its charter.

Derivation: Penal Code, § 41t, added L. 1892, ch. 693, § 1; amended L. 1894, ch. 714, § 6; re-numbered § 41s, L. 1901, ch. 371, § 10.

People v. Hochstim (1901), 36 Misc. 562, 73 N. Y. Supp. 626.

§ 773. Conspiracy to promote or prevent election.

Any two or more persons who conspire to promote or prevent the election of any person to a public office by the use of any means which are prohibited by law, shall be punishable by imprisonment for not more than one year; provided any act besides

such agreement be done to effect the object thereof by one or more of the parties to such conspiracy.

Derivation: Penal Code, § 41u, added L. 1894, ch. 714, § 7; re-numbered § 41t, L. 1901, ch. 371, § 10; amended, L. 1905, ch. 625, § 13.

§ **774. Political assessments.**

Any person who:

1. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly uses his authority or official influence to compel or induce any other officer or employee of the state or a political subdivision thereof, to pay or promise to pay any political assessments; or,

2. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly, gives, pays or hands over to any other such officer or employee any money or other valuable thing on account of or to be applied to the promotion of his election, appointment or retention in office, or makes any promise, or gives any subscription to such officer or employee to pay or contribute any money or other valuable thing for any such purpose or object; or,

3. Being such an officer or employee and having charge or control of any building, office or room occupied for any purpose of the state or of a political subdivision thereof, consents that any person enter the same for the purpose of making, collecting, receiving or giving notice of any political assessment; or,

4. Enters or remains in any such office, building or room, or sends or directs any letter or other writing thereto, for the purpose of giving notice of demanding or collecting, or being therein, gives notice of, demands, collects or receives, any political assessment; or,

5. Prepares or makes out, or takes any part in preparing or making out, any political assessment, subscription or contribution, with the intent that the same shall be sent or presented to or collected of any such officer or employee; or,

6. Sends or presents any political assessment, subscription, or contribution to, or requests its payment of, any such officer or employee,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 41u, added L. 1892, ch. 693, § 1; re-numbered § 41v, L. 1894, ch. 714, § 8; re-numbered § 41u, L. 1901, ch. 371, § 10.

§ **775. Corrupt use of position or authority.**

Any person who:

1. While holding a public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or,

2. Being a public officer or employee of the state or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer or employee, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employee, or on account of the vote or political action of such officer or employee; or,

3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof; or,

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein, or exemption from removal or discharge therefrom,

Is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both.

Derivation: Penal Code, § 41v, added L. 1892, ch. 693, § 1; re-numbered § 41w, L. 1894, ch. 714, § 8; re-numbered § 41v, L. 1901, ch. 371, § 10.

§ **776. Failure to file candidate's statement of expenses.**

Every candidate who is voted for at any public election held within this state shall, within ten days after such election, file

as hereinafter provided an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Candidates for offices to be filled by the electors of the entire state, or any division or district thereof greater than a county, shall file their statements in the office of the secretary of state. The candidates for town, village and city offices, excepting in the city of New York, shall file their statements in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all officers in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs.

Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor, and shall also forfeit his office.

Derivation: Penal Code, § 41w, added L. 1892, ch. 693, § 1; re-numbered § 41x, L. 1894, ch. 714, § 8; re-numbered § 41w, L. 1901, ch. 371, § 10.

Stryker v. Churchill (1903), 39 Misc. 578, aff'd without opinion, 80 N. Y. Supp. 588.

§ 777. Procuring fraudulent certificates in order to vote.

Any person who knowingly and wilfully procures from any court, judge, clerk or other officer, a certificate of naturalization, which has been allowed, issued, signed or sealed in violation of the laws of the United States or of this state, with intent to enable himself or any other person to vote at any election when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise, is guilty of a felony.

Derivation: Penal Code, § 41x, added L. 1893, ch. 692, § 2.

Stryker v. Churchill (1903), 39 Misc. 578, 580, 80 N. Y. Supp. 588.

§ **778. Presenting fraudulent certificates to registry boards to procure registration.**

A person who knowingly and wilfully presents to any board of officers, for the purpose of having himself or any other person placed upon any list or registry of voters, or to any board of officers for the purpose of enabling himself or any other person to vote at any election, any certificate of naturalization which has been allowed or issued by or procured from any judicial officer, clerk of a court, or other ministerial officer of a court, by any false statement, oath or representation, or in violation of the laws of the United States or of this state, with intent to enable any person to vote at any election, when such person is not entitled by the laws of the United States to become a citizen, or of this state, to exercise the elective franchise, is guilty of a felony.

Derivation: Penal Code, § 41y, added L. 1893, ch. 692, § 2.

§ **779. Soliciting from candidates.**

Any person who solicits from a candidate for an elective office money or other property, or who seeks to induce such candidate who has been placed in nomination to purchase any ticket, card or evidence of admission to any ball, picnic, fair or entertainment of any kind, is guilty of a misdemeanor; but this section shall not apply to a request for a contribution of money by an authorized representative of the political party, organization or association to which such candidate belongs.

Derivation: Part of Penal Code, § 41z(a), added L. 1895, ch. 155, § 1; amended L. 1906, ch. 503, § 2. For remainder of section, see § 780, *post*.

§ **780. Judicial candidates not to contribute.**

No candidate for a judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him; but a candidate for a judicial office may make such legal expenditures other than contributions, as are authorized by section seven hundred and sixty-seven of this article.

Derivation: Part of Penal Code, § 41z(b), added L. 1895, ch. 155, § 1; amended L. 1906, ch. 503, § 2. For remainder of section, see § 779, *ante*.

§ **781. Limitation of amounts to be expended by candidates.**

The total amount expended by a candidate for a public office,

voted for at an election, by the qualified electors of the state or any political subdivision thereof, for any of the purposes specified in section seven hundred and sixty-seven of this chapter, for contributions to political committees, as that term is defined in section five hundred and forty of the election law, or for any purpose tending in any way, directly or indirectly, to promote, or aid in securing, his nomination and election shall not exceed the amount specified herein. By a candidate for governor, the sum of ten thousand dollars; by a candidate for any other elective state office, other than a judicial office, the sum of six thousand dollars; by a candidate for the office of representative in congress or presidential elector, the sum of four thousand dollars; by a candidate for the office of state senator, the sum of two thousand dollars; by a candidate for the office of member of assembly, the sum of one thousand dollars; by a candidate for any other public office to be voted for by the qualified electors of a county, city, town or village, or any part thereof, if the total number of votes cast therein for all candidates for the office of governor at the last preceding state election, shall be five thousand or less, the sum of five hundred dollars; if the total number of votes cast therein at such last preceding state election be in excess of five thousand, the sum of three dollars for each one hundred votes in excess of such number may be added to the amounts above specified. Any candidate for a public office who shall expend for the purposes above mentioned an amount in excess of the sum herein specified shall be guilty of a misdemeanor.

Derivation: Penal Code, § 41z(c), added L. 1907, ch. 584, § 1.

§ 782. Penalty.

Any person convicted of a misdemeanor under this article shall for a first offense be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Any person convicted of a misdemeanor under this article for a second or subsequent offense shall be guilty of a felony.

Derivation: Penal Code, § 41zz, added L. 1901, ch. 371, § 11, amended L. 1905, ch. 625, § 14; L. 1906, ch. 503, § 3.

ARTICLE 76.

EVIDENCE.

SECTION 810. Using forged or fraudulently altered evidence.
811. Forging evidence.
812. Destroying evidence.
813. Inducing another to commit perjury.
814. Suppressing evidence.
815. Presumption of responsibility in general.
816. Presumption as to child under seven years.
817. Presumption of responsibility in general as to child of seven years or more.

§ 810. Using forged or fraudulently altered evidence.

A person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, offers or procures to be offered in evidence, or to be used on a motion, as genuine, a book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, is guilty of a felony.

Derivation: Penal Code, § 107, amended L. 1890, ch. 378, § 1.

People v. Levy (1896), 16 Misc. 615, 40 N. Y. Supp. 743.

§ 811. Forging evidence.

A person who fraudulently makes or prepares any false record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced in evidence, or on a motion, as genuine, upon any trial, hearing, investigation, inquiry, or other proceeding, authorized by law, is guilty of a felony.

Derivation: Penal Code, § 109, amended L. 1890, ch. 378, § 2.

People v. Levy (1896), 16 Misc. 615, 40 N. Y. Supp. 743.

§ 812. Destroying evidence.

A person who, knowing that a book, paper, record, instrument in writing, or other matter or thing, is or may be required in evidence, or on a motion, upon any trial, hearing, inquiry, investigation, or other proceeding, authorized by law wilfully destroys

the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

Derivation: Penal Code, § 110, amended L. 1890, ch. 378, § 3.

Stearns v. Titus (1908), 193 N. Y. 274, rev'g 119 App. Div. 885, 104 N. Y. Supp. 1148.

§ 813. Inducing another to commit perjury.

A person who without giving, offering or promising a bribe, incites or attempts to procure another to commit perjury, or to give false testimony as a witness, though no perjury is committed or false testimony given, or to withhold true testimony, is guilty of a misdemeanor.

Derivation: Penal Code, § 112.

McCoy v. Munro (1902), 76 App. Div. 439, 78 N. Y. Supp. 849.

§ 814. Suppressing evidence.

A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper, or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

Derivation: Penal Code, § 128.

§ 815. Presumption of responsibility in general.

A person is presumed to be responsible for his acts. The burden of proving that he is irresponsible is upon the accused person, except as otherwise prescribed in this chapter.

Derivation: Penal Code, § 17.

Murphy v. Perlstein (1902), 73 App. Div. 256-261, 76 N. Y. Supp. 657.

§ 816. Presumption as to child under seven years.

A child under the age of seven years is not capable of committing crime.

Derivation: Penal Code, § 18.

Moebus v. Herrmann (1888), 108 N. Y. 353, aff'g 38 Hun, 370; Stone v.

Dry Dock, etc., R. Co. (1889), 115 N. Y. 104, 23 N. Y. St. 551, rev'g 46 Hun, 184; Lafferty v. Third Ave. R. R. Co. (1903), 85 App. Div. 599, 83 N. Y. Supp. 405; People v. Taylor (1908), 192 N. Y. 400; see also People v. Davis, 1 Wheel Car Cas. 230; Walker's Case, 5 City Hall Rec. 137; Stage's Case, 5 City Hall Rec. 177; State v. Aaron, 7 Am. Dec. 592; Marsh v. Loader, 14 B. C. (N. S.) 535, 3 Lawson Crim. Def. 119; Willet v. Com., 13 Bush, 230.

§ 817. Presumption of responsibility in general as to child of seven years or more.

A child of the age of seven years, and under the age of twelve years, is presumed to be incapable of crime, but the presumption may be removed by proof that he had sufficient capacity to understand the act or neglect charged against him and to know its wrongfulness.

Whenever in any legal proceedings it becomes necessary to determine the age of a child, the child may be produced for personal inspection, to enable the magistrate, court or jury, to determine the age thereby; and the court or magistrate may direct an examination by one or more physicians, whose opinion shall also be competent evidence upon the question of age. A copy of the record of baptism of any child in any parish register, or register kept in a church, or by a clergyman thereof, or a certificate of baptism duly authenticated by the person in charge of such register, or who administered said baptism, and also a transcript of the record of birth recorded in any bureau of vital statistics or board of health, duly authenticated by its secretary or under its seal, and the entries made in a family Bible, shall also be competent evidence upon the question of the age.

Derivation: Penal Code, § 19, as amended L. 1884, ch. 46, § 1; L. 1888, ch. 145, § 1.

People ex rel. Zeigler v. Special Sessions (1877), 10 Hun, 224; People v. Cardillo, N. Y. Gen. Sess., Jan., 1883; People v. Plath (1885), 3 N. Y. Cr. 129; People v. Stott (1886), 4 N. Y. Cr. 306; People v. Sheppard (1887), 5 N. Y. Cr. 132, 44 Hun, 565; Stone v. Dry Dock Co. (1889), 115 N. Y. 104, 23 N. Y. St. 551, rev'g 46 Hun, 184; People v. Ragone (1900), 54 App. Div. 498, 67 N. Y. Supp. 23, 15 Crim. Rep. 193; Murphy v. Perlstein (1902), 73 App. Div. 256, 261, 76 N. Y. Supp. 657; Hill v. Balt. & N. Y. R. Co. (1902), 75 App. Div. 325, 328, 78 N. Y. Supp. 134; People v. Squazza (1903), 40 Misc. 71, 81 N. Y. Supp. 254; Lafferty v. Third Ave. R. R. Co. (1903), 85 App. Div. 599, 83 N. Y. Supp. 405; People v. Demenico (1904), 45 Misc. 309, 92 N. Y. Supp. 390, 19 Crim. Rep. 8; People v. O'Brien (1908), 125 App. Div. 255, 109 N. Y. Supp. 267; see also Bullock v. Babcock, 3 Wend. 391; People v. Kendall, 25 Wend. 399; Matter of Serafino, 66 How. Pr. 178; People v. Townsend, 3

Hill, 479; People v. Randolph, 2 Park, 174; People v. Walker, 5 City Hall Rec. 137; Stage's Case, 5 City Hall Rec. 177, Barb. Crim. Law, 262; People v. Davis, 1 Wheel. Cr. Cas. 230; People v. Teller, 1 Wheel. Cr. Cas. 231; Banks v. Metcalfe, 1 Wheel. Cr. Cas. 381; Godfrey v. State, 31 Ala. 323; Irby v. State, 32 Ga. 496; Central R. Co. v. Coggin, 73 Ga. 689; Whart. Ev. (3d Ed.), sec. 208; Angelo v. People, 96 Ill. 29, 36 Am. Rep. 132, 3 Lawson Crim. Def. 123; Shinger v. State, 53 Ind. 251, 28 Eng. Rep. 516; Cheever v. Congdon, 34 Mich. 296; Morrison v. Emsley, 53 Mich. 564; State v. Tice (Mo.), 6 West, 677; State v. Adams, 76 Mo. 355; Law v. Com., 75 Va. 885, 40 Am. Rep. 750; Doran v. Smith, 49 Vt. 353; Rex v. York, Foster, 70, 1 Bennett & Heard Lead Cas. 71; Wilet v. Com., 13 Bush. 230; Reg. v. Viasani, 31 Justice of the Peace, 260, 15 L. T. (N. S.) 240; Com. v. Green, 2 Pick. 380; State v. Arnold, 13 Ired. 184.

ARTICLE 78.

EXHIBITIONS.

SECTION 830. Acrobatic exhibitions.
831. Knife throwing; shooting; life saving apparatus at bathing places.
832. Contests of skill, speed or endurance; time of riding limited.
833. Certain exhibitions prohibited.
834. Prohibiting certain exhibitions without permission of town authorities.

§ 830. Acrobatic exhibitions.

The proprietor, occupant or lessee of any place where acrobatic exhibitions are held, who permits any person to perform on any trapeze, rope, pole or other acrobatic contrivance, without network or other sufficient means of protection from falling or other accident, and any person who makes or attempts to make an ascension by means of a balloon, with a trapeze or parachute attachment, or any other device for the purpose of making a descent from such balloon, is guilty of a misdemeanor punishable for the first offense by a fine of two hundred and fifty dollars, and for each subsequent offense by a fine of two hundred and fifty dollars and imprisonment not less than three months nor more than one year.

Derivation: Penal Code, § 384, amended L. 1892, ch. 268, § 1.

People v. Lochner (1904), 177 N. Y. 174, aff'g 73 App. Div. 120, 76 N. Y. Supp. 396, 16 N. Y. Cr. 525; People v. Schermerhorn (1908), 59 Misc. 149, 112 N. Y. Supp. 222.

§ 831. Knife throwing; shooting; life saving apparatus at bathing places.

A person who:

1. Being lessee or occupant of any place of amusement, or any plot of ground or building, uses it or allows it to be used for the exhibition of skill, in throwing any sharp instrument at or toward any human being; or,

2. Aims or discharges any bow-gun, pistol or fire-arm of any description whatever, or allows one to be aimed or discharged at or towards any human being; or,

3. Being owner, lessee, proprietor or manager of any surf-bathing place, neglects at any time during the bathing season to maintain surf or life-boats, or other life saving apparatus, duly equipped and manned in the manner and to the extent prescribed by law,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 427.

§ 832. Contests of skill, speed or endurance; time of riding limited.

In a bicycle race, or other contest of skill, speed or endurance, wherein one or more persons shall be a contestant or contestants, it shall be unlawful for any contestant to continue in such race or contest for a longer time than twelve hours during any twenty-four hours. The proprietor, occupant or lessee of the place where such race or contest takes place, consenting to, allowing or permitting any violation of the foregoing provisions of this section is guilty of a misdemeanor. The manager or superintendent of such race or contest consenting to, permitting or allowing any violation of the provisions of the first sentence of this section is guilty of a misdemeanor.

Derivation: Penal Code, § 383a, added L. 1899, ch. 316, § 1.

§ 833. Certain exhibitions prohibited.

No person shall exhibit or perform for gain or profit, any puppet-show, any wire or rope-dance, or any other idle shows, acts or feats which common showmen, mountebanks or jugglers usually practice or perform; and no owner or occupant of any house, outhouse, yard, field, shed or other place, shall furnish or allow the same to be used for the accommodation of such exhibition or performance. Whoever shall offend against either of these provisions, shall forfeit twenty-five dollars for each offense, to be recovered by and in the name of the overseers of the poor of the town where the offense shall be committed.

Derivation: R. S., pt. 1, ch. 20, tit. 8, § 1.

§ 834. Prohibiting certain exhibitions without permission of town authorities.

The penalties in the preceding section shall also apply to and be

recovered of any person who shall exhibit for gain or profit any painting, any animal or other natural or artificial curiosity, or any other thing not prohibited in the foregoing section, in any town, without having first obtained permission in writing for that purpose, signed by two justices of the peace of the town, in which license the nature of such exhibition shall be described, and for the granting of which no fee or reward shall be taken.

Derivation: R. S., pt. 1, ch. 20, tit. 8, § 2.

ARTICLE 80.

EXTORTION AND THREATS.

SECTION 850. Extortion defined.
851. What threats may constitute extortion.
852. Punishment of extortion.
853. Compulsion to execute instrument.
854. Extortion committed under color of official right.
855. Public officer taking illegal fees commits extortion.
856. Blackmail.
857. Attempts to extort money or property by verbal threats.
858. Threat referring to act of third person.
859. Rule as to person acting under threats.
860. Intimidating public officer or a person authorized to determine a controversy.

§ 850. Extortion defined.

Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

Derivation: Penal Code, § 552.

People v. Wilzig (1886), 4 N. Y. Cr. 403; People v. Barondess (1891), 133 N. Y. 649, rev'g 61 Hun, 571, 16 N. Y. Supp. 436; People v. Gardner (1894), 144 N. Y. 119, mod'f'g 73 Hun, 66, 25 N. Y. Supp. 1072; People v. Jackson (1905), 47 Misc. 60, 95 N. Y. Supp. 286; People v. Jaffe (1906), 185 N. Y. 497, 19 N. Y. Cr. 283, rev'g 112 App. Div. 521, 98 N. Y. Supp. 486; People v. Weinseimer (1907), 117 App. Div. 604, 102 N. Y. Supp. 579.

§ 851. What threats may constitute extortion.

Fear, such as will constitute extortion, may be induced by an oral or written threat:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family; or,

2. To accuse him, or any relative of his or any member of his family, of any crime; or,

3. To expose, or impute to him, or any of them, any deformity or disgrace; or,

4. To expose any secret affecting him or any of them; or,

5. To kidnap him or any relative of his or member of his family; or,

6. To injure his person or property or that of any relative of his or member of his family by the use of weapons or explosives. (Amended by L. 1911, chs. 121 and 602, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 553.

People v. Jaffe (1906), 185 N. Y 497, 19 N. Y. Cr. 283, rev'g 112 App. Div. 521, 98 N. Y. Supp. 486; People v. Weinseimer (1907), 117 App. Div. 604, 102 N. Y. Supp. 579, 20 N. Y. Cr. 539.

§ 852. Punishment of extortion.

A person who extorts any money or other property from another, under circumstances not amounting to robbery, is punishable by imprisonment not exceeding fifteen years, if the same is done by means of force or a threat mentioned in section eight hundred and fifty or in either of the first four subdivisions of section eight hundred and fifty-one, and by imprisonment for not less than five years nor more than twenty years if the same is done by means of a threat mentioned in subdivisions five or six of the latter section. (Amended by L. 1909, ch. 368; L. 1911, ch. 602, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 554.

People v. Hughes (1893), 137 N. Y. 30, aff'g 46 N. Y. S. Rep. 413, 19 N. Y. S. 550; People v. Borges, 6 Abb. Pr. 132.

§ 853. Compulsion to execute instrument.

The compelling or inducing of another, by such force or threat, to make, subscribe, seal, execute, alter or destroy any valuable security, or instrument or writing affecting or intended to affect any cause of action or defense or any property is an extortion of property within the last two sections.

Derivation: Penal Code, § 555, amended L. 1882, ch. 384, § 1.

§ 854. Extortion committed under color of official right.

A public officer, or a person pretending to be such, who, unlawfully and maliciously, under pretense or color of official authority:

1. Arrests another, or detains him against his will; or,
2. Seizes or levies upon another's property; or,
3. Dispossesses another of any lands or tenements; or,
4. Does any other act, whereby another person is injured in his person, property, or rights,

Commits oppression and is guilty of a misdemeanor.

Derivation: Penal Code, § 556.

People v. Jefferey (1894), 82 Hun, 409, 31 N. Y. Supp. 267; People ex rel. Devery v. Jerome (1901), 36 Misc. 259, 73 N. Y. Supp. 306; People v. Summers (1903), 40 Misc. 384, 17 N. Y. Cr. 321, 82 N. Y. Supp. 297; Hale v. Burns (1905), 101 App. Div. 107, 91 N. Y. Supp. 929; People v. Jackson (1905), 47 Misc. 60, 95 N. Y. Supp. 286; McGorie v. McAdoo (1906), 49 Misc. 603, 99 N. Y. Supp. 1107; Delaney v. Flood (1906), 183 N. Y. 329, rev'g 105 App. Div. 642, 94 N. Y. Supp. 1143; Eden Musee Co. v. Bingham (1908), 125 App. Div. 783, 110 N. Y. Supp. 210; Fairmont Athletic Club v. Bingham (1908), 61 Misc. 423; People ex rel. Reardon v. Flynn (1908), 58 Misc. 623, 111 N. Y. Supp. 1065.

§ 855. Public officer taking illegal fees commits extortion.

A public officer who asks, or receives, or agrees to receive, a fee or other compensation for his official service:

1. In excess of the fee or compensation allowed to him by statute therefor; or,

2. Where no fee or compensation is allowed to him by statute therefor,

Commits extortion and is guilty of a misdemeanor.

Derivation: Penal Code, § 557.

§ 856. (Am'd, 1909.) Blackmail.

A person who, knowing the contents thereof, and with intent, by means thereof, to extort or gain any money or other property, or to do, abet, or procure any illegal or wrongful act, sends, delivers, or in any manner causes to be forwarded or received, or makes and parts with for the purpose that there may be sent or delivered, any letter or writing, threatening:

1. To accuse any person of a crime; or,

2. To do any injury to any person or to any property; or,

3. To publish or connive at publishing any libel; or,

4. To expose or impute to any person any deformity or disgrace,

Is punishable by imprisonment for not more than fifteen years.

Derivation: Penal Code, § 558. Amended by L. 1909, ch. 368. In effect Sept. 1, 1909.

People v. Thompson (1884), 97 N. Y. 313, 2 N. Y. Cr. 526; People v. Wightman (1887), 104 N. Y. 598, agg. 43 Hun, 358; People v. Gillian (1889), 115 N. Y. 643, aff'g 50 Hun, 37, 2 N. Y. Supp. 476; People v. Eichler (1894), 75 Hun, 26, 26 N. Y. Supp. 998; People v. Wickes (1906), 112 App. Div. 39, 98 N. Y. Supp. 163, 20 Crim. Rep. 23; People v. Triscoli (1907), 117 App. Div. 120, 102 N. Y. Supp. 328, 21 Crim. Rep. 1; see also People v. Loviless, 84 N. Y. Supp. 1115; Edsall v. Brooks, 17 Abb. Pr. 226; People v. Griffin, 2 Barb. 427.

§ 857. Attempts to extort money or property by oral threats.

A person who, under circumstances not amounting to robbery, or an attempt at robbery, with intent to extort or gain any money or other property, orally makes such a threat as would be criminal under any of the foregoing sections of this article or of section five hundred and fifty-one, if made or communicated in writing, is guilty of a misdemeanor. The provisions of this section do not apply to matters governed by section eight hundred and fifty-one of this act. (Amended by L. 1911, ch. 121, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 560.

§ **858. Threat referring to act of third person.**

It is immaterial whether a threat, made as specified in the foregoing sections of this article, and in section five hundred and fifty-one, is of things to be done or omitted by the offender, or by any other person.

Derivation: Penal Code, § 561.

People v. Weinseimer (1907), 117 App. Div. 605, 102 N. Y. Supp. 579, 20 Crim. Rep. 539.

§ **859. Rule as to persons acting under threats.**

Where a crime is committed or participated in by two or more persons, and is committed, aided, or participated in by any one of them, only because, during the time of its commission, he is compelled to do, or to aid or participate in the act, by threats of another person engaged in the act or omission, and reasonable apprehension on his part of instant death or grievous bodily harm, in case he refuses, the threats and apprehension constitute duress, and excuse him.

Derivation: Penal Code, § 25.

§ **860. Intimidating public officer or a person authorized to determine a controversy.**

A person who directly or indirectly addresses any threat or intimidation to a public officer, or to a juror, referee, arbitrator, appraiser, or assessor, or to any other person, authorized by law to hear or determine any controversy or matter, with intent to induce him, contrary to his duty, to do or make, or to omit or delay, any act, decision or determination, is guilty of a misdemeanor.

Derivation: Penal Code, § 127.

Smith v. Botens, 13 N. Y. Supp. 223; Matter of Tyler, 71 Cal. 351.

ARTICLE 82.

FERRIES.

SECTION 870. Ferries.
871. Penalty for neglect to post schedule of ferry rates.

§ 870. Ferries.

A person who:

1. Maintains a ferry for profit or hire upon any of the waters of this state without authority of law; or,

2. Having entered into a recognizance to keep or maintain a ferry, violates the condition of such recognizance,

Is guilty of a misdemeanor.

Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either county.

Derivation: Penal Code, § 415, amended L. 1892, ch. 692, § 1.

Aikin v. Railroad Co. (1859), 20 N. Y. 370; Mayor, etc., v. Starin (1887), 106 N. Y. 1; People v. Mago (1893), 69 Hun, 559, 23 N. Y. Supp. 938; People v. Babcock, 11 Wend. 587.

§ 871. Penalty for neglect to post schedule of ferry rates.

A person, corporation or association operating any ferry in this state, or between this state and any other state, operating from or to a city of five hundred thousand inhabitants or over, posting a false schedule of ferry rates, or neglecting to post in a conspicuous and accessible place in each of its ferry-houses, in plain view of the passengers, a schedule, plainly printed in the English language, of the rates of ferriage charged thereon and authorized by law to be charged for ferriage over such ferry, is guilty of a misdemeanor.

Derivation: Penal Code, § 415a, added L. 1893, ch. 692, § 2.

ARTICLE 84.

FORGERY.

SECTION 880. Definitions.
881. Uttering forged instruments is forgery.
882. Falsely indicating person as corporate officer.
883. Uttering writing signed with wrong-doer's name.
884. Forgery in first degree.
885. False certificate to certain instruments is forgery.
886. Punishment for forgery in first degree.
887. Forgery in second degree.
888. Punishment for forgery in second degree.
889. Forgery in third degree.
890. Officer of corporation selling fraudulent shares.
891. Forging passage tickets.
892. Forging United States or state stamps.
893. Punishment for forgery in third degree.
894. Having possession of counterfeit coin.
895. Advertising counterfeit money and stamps.

§ 880. Definitions.

Terms forge, forged and forging.—The expressions "forge," "forged" and "forging," as used in this article, include false making, counterfeiting and the alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature, of a party or witness, and the placing or connecting together with intent to defraud different parts of several genuine instruments.

Definition of written instrument.—An instrument partly written and partly printed, or wholly printed with a written signature thereto, and any signature or writing purporting to be a signature of, or intended to bind an individual, a partnership, a corporation or association or an officer thereof, is a written instrument or a writing, within the provisions of this article.

Derivation: Penal Code, §§ 513, 520.

People v. Underhill (1894), 142 N. Y. 38, rev'g 75 Hun, 329, 26 N. Y. Supp. 1030; People v. Drayton (1899), 41 App. Div. 40, 58 N. Y. Supp. 439, rev'd 168 N. Y. 10; Marden v. Dorthy (1899), 160 N. Y. 39, aff'g 12 App. Div. 188, 42 N. Y. Supp. 827; People v. Mingey (1907), 118 App. Div. 652, 103 N. Y. Supp. 627, 21 Crim. Rep. 110.

§ **881. Uttering forged instruments is forgery.**

A person who, knowing the same to be forged or altered, and with intent to defraud, utters, offers, disposes of or puts off as true, or has in his possession, with intent so to utter, offer, dispose of, or put off:

1. A forged seal or plate, or any impression of either; or,
2. A forged coin; or,
3. A forged will, deed, certificate, indorsement, record, instrument or writing, or other thing, the false making, forging, or altering of which is punishable as forgery,

Is guilty of forgery in the same degree as if he had forged the same.

Derivation: Penal Code, § 521.

People v. Martin (1885), 36 Hun, 462, 3 N. Y. Cr. 122; People v. Adler (1893), 140 N. Y. 331, aff'g 53 N. Y. S. R. 936, 25 N. Y. Supp. 1132; People v. Wiman (1894), 9 Misc. 441, 29 N. Y. Supp. 1034, 85 Hun, 320, 32 N. Y. Supp. 1037, 148 N. Y. 29; People v. Underhill (1894), 142 N. Y. 38, 9 N. Y. Cr. 172, rev'g 75 Hun, 329, 26 N. Y. Supp. 1030; People v. Altman (1895), 147 N. Y. 473, rev'g 86 Hun, 568, 33 N. Y. Supp. 905; Marden v. Dorthy (1899), 160 N. Y. 56, aff'g 12 App. Div. 188, 42 N. Y. Supp. 827; People v. Alderdice (1907), 120 App. Div. 368; People v. Browne (1907), 103 N. Y. Supp. 903, 118 App. Div. 793, 21 N. Y. Cr. 93; People v. Mingey (1907). 118 App. Div. 652, 103 N. Y. Supp. 627, 21 N. Y. Cr. 110; see also People v. Camp, 17 N. Y. Supp. 396; Paige v. People, 3 Abb. Dec. 439, 3 Park, 683; Watson v. People, 64 Barb. 130; People v. Caton, 25 Mich. 392; Smith v. State, 20 Nebr. 284, 57 Am. Rep. 832.

§ **882. Falsely indicating person as corporate officer.**

The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, state or government.

Derivation: Penal Code, § 519.
Manhattan Life Ins. Co. v. Railroad Co. (1893), 139 N. Y. 149.

§ **883. Uttering writing signed with wrong-doer's name.**

Whenever the false making or uttering of any instrument or writing is forgery in any degree, a person is guilty of forgery in the same degree, who, with intent to defraud, offers, disposes of, or

puts off such an instrument or writing subscribed or indorsed in his own name, or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or indorsement is the act of another person of the same name, or of a person not in existence.

Derivation: Penal Code, § 522.

Manhattan Life Ins. Co. v. Railroad Co. (1893), 139 N. Y. 149; Third Nat. Bank v. Merchants' Nat. Bank (1894), 76 Hun, 475, 27 N. Y. Supp. 1070; People v. Browne (1907), 118 App. Div. 799, 103 N. Y. Supp. 903, 21 N. Y. Cr. 93.

§ 884. Forgery in first degree.

A person is guilty of forgery in the first degree who with intent to defraud, forges:

1. A will or codicil of real or personal property, or the attestation thereof, or a deed or other instrument, being or purporting to be the act of another, by which any right or interest in property is or purports to be transferred, conveyed, or in any way charged or affected; or,

2. A certificate of the acknowledgment or proof of a will, codicil, deed, or other instrument, which by law may be recorded or given in evidence when duly proved or acknowledged, made or purporting to have been made by a court or officer duly authorized to make such a certificate; or,

3. A certificate, bond, paper writing, or other public security, issued or purporting to have been issued by or under the authority of this state, or of the United States, or of any other state or territory of the United States, or of any foreign government, country or state, or by any officer thereof in his official capacity, by which the payment of money is promised absolutely or upon any contingency, or the receipt of any money or property is acknowledged, or being or purporting to be evidence of any debt or liability, either absolute or contingent, issued or purporting to have been issued by lawful authority; or,

4. An indorsement or other instrument, transferring or purporting to transfer the right or interest of any holder of such a certificate, obligation, public security, evidence of debt or liability, or of any person entitled to such right or interest; or,

5. A certificate of stock, bond or other writing, bank note, bill of exchange, draft, check, certificate of deposit, or other obligation or evidence of debt, issued or purporting to be issued

by any bank, banking association or body corporate existing under the laws of this state, or of the United States, or of any other state, government, or country, declaring or purporting to declare any right, title or interest of any person in any portion of the capital stock, or property of such a body corporate, or promising or purporting to promise or agree to the payment of money, or the performance of any act, duty, or obligation; or,

6. An indorsement or other writing, transferring or purporting to transfer the right or interest of any holder of such a certificate, bond, or writing obligatory, or of any person entitled to such right or interest.

Derivation: Penal Code, § 509.

People v. Corbin (1874), 56 N. Y. 363; Kerrains v. People (1875), 60 N. Y. 221, 19 Am. Rep. 158; Brown v. People (1876), 8 Hun, 562, aff'd 72 N. Y. 571; Mann v. People (1878), 15 Hun, 155, aff'g 75 N. Y. 486; Mayer v. People (1880), 80 N. Y. 364; People v. D'Argencour (1884), 95 N. Y. 624, 628, 2 N. Y. Cr. 267; People v. Dewey (1885), 35 Hun, 308; People v. Brie (1887), 43 Hun, 317, aff'd 105 N. Y. 618; People v. Everhardt (1887), 104 N. Y. 591, 6 N. Y. Cr. 232, aff'd 5 N. Y. Cr. Rep. 91, 25 W. Dig. 300; People v. De Kroyft (1888), 49 Hun, 71, 76, 1 N. Y. Supp. 692; People v. Altman (1895), 147 N. Y. 473, rev'g 86 Hun, 568, 33 N. Y. Supp. 905; People v. Wiman (1895), 148 N. Y. 29, 12 N. Y. Cr. 77, aff'd 85 Hun, 320, 32 N. Y. Supp. 1037; People v. Drayton (1901), 168 N. Y. 12, 14 N. Y. Cr. 141, rev'g 41 App. Div. 40, 58 N. Y. Supp. 439; People v. Filkin (1903), 83 App. Div. 589, 82 N. Y. Supp. 15, 17 N. Y. Cr. 348; People v. Weaver (1903), 177 N. Y. 434, rev'g 81 App. Div. 567, 81 N. Y. Supp. 519; People v. Alderdice (1907), 120 App. Div. 368; People v. Colmey (1907), 188 N. Y. 573, aff'g 116 App. Div. 516, 101 N. Y. Supp. 1016; People v. Browne (1907), 118 App. Div. 799, 103 N. Y. Supp. 903; see also Billings v. State, 107 Ind. 54, 57 Am. Rep. 77; Bough v. People, 1 Week. Dig. 182; Conner's Case, 3 City Hall Rec. 59; People v. Flanders, 18 Johns. 163; People v. Harrison, 8 Barb. 560; People v. Jones, 27 N. Y. Week. Dig. 222; Paige v. People, 3 Abb. Dec. 439, 488, 6 Park, 683; People v. Peacock, 6 Cow. 72; People v. Stearns, 21 Wend. 409; Vincent v. People, 5 Park, 88; State v. Wheeler, 43 Alb. L. J. 257; Rex v. Arscott, 6 Car. & Payne, 408, 2 Bish. Cr. Law (7th ed.), and sec. 582, 2 Whart. Cr. Law (7th ed.), sec. 1432, 2 Arch. Crim. Pr. & Pl. (7th ed.), 819, Pomeroy's ed. of Arch., vol. 2, p. 1584; Abbott v. Rose, 62 Me. 194; Com. v. Baldwin, 11 Gray, 197; Barton v. State, 23 Wis. 587; State v. Benham, 7 Com. 414; People v. Blake, 65 Cal. 275; Heilbronner's Case, 1 Park, 149; U. S. v. Long, 30 Fed. 678; Com. v. McDonald, 5 Cush. 365; State v. McKiernan, 17 Nev. 228; Rex v. Story, Russ & Ryan, 81; Queen v. White, 1 Den. Cr. Cas. 208, 2 Cox Cr. Cas. 210, 2 C. & K. 404; Withaup v. United States, 127 Fed. 532; State v. Young, 46 N. H. 266.

§ **885. False certificate to certain instruments is forgery.**

An officer authorized to take the proof or acknowledgment of an instrument which by law may be recorded, who wilfully certifies falsely that the execution of such an instrument was acknowledged by any party thereto, or that the execution of any such instrument was proved, is guilty of forgery in the first degree.

Derivation: Penal Code, § 510.

People v. Hayes (1893), 24 N. Y. 201, 70 Hun, 111, 24 N. Y. Supp. 194; Albany County Savings Bank v. McCarty (1896), 149 N. Y. 82, rev'g 71 Hun, 227, 24 N. Y. Supp. 991; Marden v. Dorthy (1899), 160 N. Y. 56, aff'g 12 App. Div. 188, 42 N. Y. Supp. 827.

§ **886. Punishment for forgery in first degree.**

Forgery in the first degree is punishable by imprisonment for a term not exceeding twenty years.

Derivation: Penal Code, § 523, amended L. 1892, ch. 662, § 14.

§ **887. Forgery in second degree.**

A person is guilty of forgery in the second degree who, with intent to defraud:

1. Forges the great or privy seal of this state, the seal of any court of record, or of any public office or officer authorized by law, or of any body corporate created by or existing under the laws of this state, or of the United States, or of any other state or any territory of the United States, or of any other state, government, or country, or any impression of such a seal; or any gold or silver coin, whether of the United States, or of any foreign state, government or country; or,

2. Forges a record of a will, conveyance, or instrument of any kind, the record of which is by the law of this state made evidence, or of any judgment, order, or decree of any court or officer, or a certified or authenticated copy thereof; or,

A judgment roll, judgment, order, or decree of any court or officer, or an enrollment thereof, or a certified or authenticated copy thereof, or any document or writing purporting to be such judgment, order, decree, enrollment, or copy; or,

An entry made in any book of record or accounts, kept by or in the office of any officer of this state, or of any village, city, town, or county of the state, by which any demand, claim, obligation, or interest, in favor of or against the people of the state,

or any city, village, town or county, or any officer thereof, is or purports to be created, increased, diminished, discharged, or in any manner affected; or an entry made in any book of records or accounts kept by a corporation doing business within the state, or in any account kept by such a corporation, whereby any pecuniary obligation, claim, or credit is or purports to be created, increased, diminished, discharged, or in any manner affected; or,

An instrument, document, or writing, being or purporting to be, a process or mandate issued by a competent court, magistrate, or officer of the state, or the return of an officer, court or tribunal, to such a process or mandate; or a bond, recognizance, undertaking, pleading, or proceeding, filed or entered in any court of the state, or a certificate, order or allowance by a competent court, or officer, or a license or authority granted pursuant to any statute of the state or a certificate, document, instrument, or writing, made evidence by any law or statute; or,

An instrument or writing, being or purporting to be the act of another, by which a pecuniary demand or obligation is or purports to be or to have been created, increased, discharged, or diminished, or in any manner affected, or by which any rights or property whatever are or purport to be or to have been created, transferred, conveyed, discharged, increased, or diminished, or in any manner affected, the punishment for forging, altering, or counterfeiting which is not hereinbefore prescribed, by which false making, forging, altering, or counterfeiting, any person may be bound, affected or in any way injured in his person or property; or,

3. Makes or engraves a plate in the form or similitude of a promissory note, bill of exchange, bank note, draft, check, certificate of deposit, or other evidence of debt, issued by a banker, or by any banking corporation or association, incorporated or carrying on business under the laws of the state, or of the United States, or of any other state or territory of the United States, or of any foreign government, or country, without the authority of such banker, or banking corporation or association; or,

Without like authority, has in his possession or custody such a plate, with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression to be uttered; or,

Without like authority, has in his possession or custody any impression taken from such a plate, with intent to have the same filled up and completed for the purpose of being uttered; or,

Makes or engraves, or causes to be made or engraved, upon any plate, any figures or words, with intent that the same may be used for the purpose of falsely altering any evidence of debt hereinbefore mentioned.

A plate, specified in this section, is in the form and similitude of the genuine instrument imitated, if the finished parts of the engraving thereupon resemble and conform to similar parts of the genuine instruments.

Derivation: Penal Code, §§ 511, 512.

Graves v. American Exchange Bank (1858), 17 N. Y. 205; Noakes v. People (1862), 25 N. Y. 380, aff'g 5 Park, 291; People v. Clements (1863), 26 N. Y. 194; Miller v. People (1873), 52 N. Y. 304, 11 Am. Rep. 706; Rosekrans v. People (1874), 3 Hun, 287; Parmelee v. People (1876), 8 Hun, 623; People v. Mann (1878), 75 N. Y. 484, 31 Am. Rep. 482, 19 Alb. L. J. 28; People v. D'Argencour (1884), 32 Hun, 178, aff'd 95 N. Y. 624; People v. Dewey (1885), 35 Hun, 308; People v. Elmore (1885), 3 N. Y. Cr. 264; People v. Wheeler (1888), 47 Hun, 484; People v. Reinitz (1889), 7 N. Y. Cr. 71, 6 N. Y. Supp. 672; People v. Tower (1892), 135 N. Y. 457; People v. Adler (1893), 140 N. Y. 331, aff'g 53 N. Y. S. R. 936, 25 N. Y. Supp. 1132; People v. Altman (1895), 147 N. Y. 473, rev'g 86 Hun, 568, 33 N. Y. Supp. 905; People v. Wiman (1895), 148 N. Y. 129, 12 N. Y. Cr. 77; People v. Oishei (1897), 20 Misc. 163, 45 N. Y. Supp. 49, 12 N. Y. Cr. 362; People v. Mershon (1899), 43 App. Div. 541, 60 N. Y. Supp. 115; Matter of Van Orden (1900), 32 Misc. 215, 65 N. Y. Supp. 720, 15 N. Y. Cr. 79; People v. Hertz (1901), 35 Misc. 177, 71 N. Y. Supp. 489; People v. Martin (1902), 38 Misc. 67, 76 N. Y. Supp. 953; People v. Weaver (1903), 177 N. Y. 434, 18 Crim. Rep. 187, rev'g 81 App. Div. 567, 81 N. Y. Supp. 519; People v. Herzog (1905), 47 Misc. 50, 93 N. Y. Supp. 357, 19 Crim. Rep. 375; People v. Gianvecchio (1907), 188 N. Y. 561, aff'g 113 App. Div. 903, 98 N. Y. Supp. 1110; People v. Mingey (1907), 118 App. Div. 652, 103 N. Y. Supp. 627, 21 Crim. Rep. 110; see also People v. Farrington, 14 Johns. 348; People v. Graham, 1 Buff. Super. Ct. 151, 6 Park, 135; Harris v. People, 9 Barb. 664; Martin's Case, 6 City Hall Rec. 27; People v. Osmer, 4 Park, 244; People v. Peacock, 6 Cow. 72; Quinn's Case, 6 City Hall Rec. 63; People v. Shaw, 5 Johns. 236; State v. Covington, 94 N. C. 913, 55 Am. Rep. 650; Montgomery v. State, 12 Tex. App. 323.

§ 888. Punishment for forgery in second degree.

Forgery in the second degree is punishable by imprisonment for a term not exceeding ten years.

Derivation: Penal Code, § 524, amended L. 1892, ch. 662, § 15.

§ 889. Forgery in third degree.

A person who:

1. Being an officer or in the employment of a corporation asso-

ciation, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or,

2. With intent to injure or defraud, shall falsely make, alter, forge or counterfeit, or shall cause, aid, abet, assist or otherwise connive at, or be a party to the making, altering, forging or counterfeiting, of any letter, telegram, or other written communication, paper, or instrument by which making, altering, forging or counterfeiting, any other person shall be in any manner injured in his good name, standing, position or general reputation; or,

3. Shall alter, or shall cause, aid, abet, or otherwise connive at, or be a party to the uttering of any letter, telegram, report or other written communication, paper or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report or other written communication, paper or instrument, or paper purporting to be a copy thereof, as aforesaid, the person uttering the same shall know to be false, forged or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests or rights of such other person shall be misrepresented or otherwise injuriously affected; or,

4. With intent to defraud, shall forge, counterfeit or falsely alter and wrongfully utter any ticket, contract or other paper, or writing entitling, or purporting to entitle, the person whose name appears therein, or the holder or bearer thereof, to entrance upon the grounds or premises of any membership corporation, or being thereupon, to remain upon such grounds or premises; or, with like intent, shall use any such ticket, contract or other paper or writing, to effect an entrance or as evidence of his right to remain upon such grounds or premises; or, with like intent, shall sell, exchange or deliver, or keep or offer for sale, exchange or delivery, or receive upon any purchase, exchange or delivery, any such ticket, contract or other paper or writing, knowing the same to have been forged, counterfeited or falsely altered,

Is guilty of forgery in the third degree.

A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property:

1. Alters, erases, obliterates, or destroys an account, book of

accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or,

2. Makes a false entry in any such account or book of accounts; or,

3. Wilfully omits to make true entry of any material particular in any such account or book of accounts, made, written, or kept by him or under his direction,

Is guilty of forgery in the third degree.

Derivation: Penal Code, § 514, amended L. 1884, ch. 378, § 1; L. 1892, ch. 692, § 1; Penal Code, § 515.

Phelps v. People (1878), 72 N. Y. 371, aff'g 6 Hun, 428; People v. Underhill (1894), 142 N. Y. 38, 44, rev'g 75 Hun, 329, 26 N. Y. Supp. 1030; People v. Herzog (1905), 47 Misc. 50, 93 N. Y. Supp. 357, 19 N. Y. Cr. 372, 375, 380, 382; People v. Abeel (1905), 182 N. Y. 415, 19 N. Y. Cr. 525, 527, aff'g 100 App. Div. 516, 91 N. Y. Supp. 1107; People v. Hegeman (1907), 57 Misc. 295, 107 N. Y. Supp. 261, 21 N. Y. Cr. 535; People v. Curtiss (1907), 118 App. Div. 259, 103 N. Y. Supp. 395; People ex rel. Hegeman v. Corrigan (1908), 129 App. Div. 76; People v. Luhrs (1908), 127 App. Div. 637; see also Phelps' Case, 49 How. Pr. 462, 72 N. Y. 365; Wright v. Henkel, 190 U. S. 47.

§ 890. Officer of corporation selling fraudulent shares.

An officer, agent or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who wilfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in section eight hundred and ninety-three of this chapter for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

Derivation: Penal Code, § 518.

§ 891. Forging passage tickets.

A person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railway or in any vessel or other public conveyance; and a person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

Derivation: Penal Code, § 516.

People v. Harrison, 8 Barb. 560; People v. Shall, 9 Cow. 778; State v. Weaver, 84 N. C. 836, 55 Am. Rep. 647; Com. v. Ray, 3 Gray, 441; Reg. v. Boult, 3 Carr. & K. 604.

§ 892. Forging United States or state stamps.

A person who forges, counterfeits or alters any postage or revenue stamp of the United States, or any tax or revenue stamp of the state of New York, or who sells, or offers, or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

Derivation: Penal Code, § 517, amended L. 1905, ch. 242, § 1.

§ 893. Punishment for forgery in third degree.

Forgery in the third degree is punishable by imprisonment for not more than five years.

Derivation: Penal Code, § 525.

§ 894. Having possession of counterfeit coin.

A person who has in his possession a counterfeit of any gold or silver coin, whether of the United States or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate or export the same, as true or as false, or to cause the same to be so uttered or passed, is punishable by imprisonment not more than five years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 526.

Weaver's Case, 2 City Hall Rec. 57; Mose's Case, 2 City Hall Rec. 84; *Murphy's* Case, 4 City Hall Rec. 42; Gallagher's Case, 5 City Hall Rec. 1;

Dorsett's Case, 5 City Hall Rec. 77; Lampier's Case, 5 City Hall Rec. 79; Quinn's Case, 6 City Hall Rec. 93; Stewart v. Jessup, 51 Ind. 411, 19 Am. Rep. 738.

§ 895. Advertising counterfeit money and stamps.

A person who prints, writes, utters, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, hand bill or any other written or printed matter, advertising, offering or purporting to advertise or offer for sale, loan, exchange, gift or distribution, or to furnish, procure or distribute any counterfeit coin, paper money, internal revenue stamp, postage stamp or any other token of value, or what purports to be counterfeit coin, paper money, internal revenue stamp, postage stamp or any other token of value, or giving, or purporting to give, either directly or indirectly, information where, how, of whom or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or token of value, can be procured or had, or what purports to be counterfeit coin, paper money, internal revenue stamp, postage stamp or other token of value, can be procured or had, or whoever shall aid, assist or abet in any manner, in any scheme or device whatsoever, offering or purporting to offer, for sale, loan, gift, exchange or distribution, any counterfeit coin, paper money, internal revenue stamp, postage stamp or other token of value, whether called "green articles," "queer coin," "paper goods," "bills," "spurious treasury notes," "United States goods," "green paper goods," "business that is not legitimate," "cigars," "green cigars," or by any other name or title, or any other device of a similar character, shall be guilty of a felony and on conviction shall be punished by imprisonment for not less than one year nor more than five years, and by a fine of not less than one hundred dollars nor more than one thousand dollars for each offense.

Whoever in and for executing, operating, promoting, carrying on, or in the aiding, assisting or abetting in the promoting, operating, carrying on, or executing of any scheme or device whatsoever to defraud, by use or means of, any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution, or exchange, of counterfeit coin, paper money, internal revenue stamps, postage stamps or other tokens of value as provided in this section, shall use any fictitious, false or assumed name or address, or name or address other than

his own right, proper and lawful name; or whoever in the executing, operating, promoting, carrying on, aiding, assisting or abetting in the execution, promotion or carrying on of any scheme or device offering for sale, loan, gift, or distribution, or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information directly or indirectly, where, how, of whom, or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or other token of value, can be obtained or had, or who shall knowingly receive or take from the mails of the United States any letter or package addressed to any such fictitious, false or assumed name or address or name other than his own right, proper or lawful name shall be guilty of a felony, and on conviction shall be punished by imprisonment for not less than one year, nor more than five years, and by a fine of not less than one hundred dollars nor more than two thousand dollars. Any letter, circular, writing, or paper, offering or purporting to offer for sale, loan, gift, or distribution or giving, or purporting to give information directly or indirectly, where, how, of whom, or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or token of value, may be obtained or had, or concerning any similar scheme or device to defraud the public, whether such article, matter or thing is called "green articles," "queer coins," "paper goods," "queer," "articles," "bills," "business that is not legitimate," "spurious treasury notes," "United States goods," "green paper goods," "green articles," "cigars," "green cigars," or by any other name device or title of a similar character, shall be deemed presumptive proof of the fraudulent character of such scheme.

Derivation: Penal Code, § 527, amended L. 1887, ch. 687, § 1.

People v. Reilly (1889), 51 Hun 624, 4 N. Y. Supp. 81; People v. Albow (1893), 140 N. Y. 130, rev'g 71 Hun, 123, 24 N. Y. Supp. 519; People v. Marvin (1894), 79 Hun, 310, 29 N. Y. Supp. 381.

ARTICLE 86.

FRAUDS AND CHEATS.

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§ 920. Fraud in affairs of limited partnership.

A member of a limited partnership, who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

Derivation: Penal Code, § 375.

§ 921. Intent to defraud.

Whenever, by any of the provisions of this chapter, an intent to defraud *is required, in order* to constitute an offense, it is suffi-

cient if an intent appears to defraud any person, association or body politic or corporate, whatever.

Derivation: Penal Code, § 721.

People v. Hegeman (1907), 57 Misc. 295, 304, 107 N. Y. Supp. 261.

§ 922. Production of pretended heir.

A person who fraudulently produces an infant, falsely pretending it to have been born of a parent whose child is or would be entitled to inherit real property, or to receive a share of personal property, with intent to intercept the inheritance of such real property, or the distribution of such personal property, or to defraud any person out of the same, or any interest therein; or who, with intent fraudulently to obtain any property, falsely represents himself or another to be a person entitled to an interest or share in the estate of a deceased person, either as executor, administrator, husband, wife, heir, legatee, devisee, next of kin, or relative of such deceased person; is punishable by imprisonment in a state prison for not more than ten years.

Derivation: Penal Code, § 151.

People v. Cunningham, 3 Park, 520, 531.

§ 923. Substituting one child for another.

A person, to whom a child has been confided for nursing, education, or any other purpose, who, with intent to deceive a parent, guardian or relative of the child, substitutes or produces to such parent, guardian or relative, another child or person, in place of the child so confided, is punishable by imprisonment in a state prison for not more than seven years.

Derivation: Penal Code, § 152.

§ 924. Fictitious copartnership names.

A person who transacts business, using the name, as partner, of one not interested with him as partner, or using the designation "and company," or "& Co." when no actual partner is represented thereby is guilty of a misdemeanor. But this section does not apply to any case, where it is specially prescribed by statute that a partnership name may be continued in use by a successor, survivor, or other person.

Derivation: Penal Code, § 363.

Donlon v. English (1895), 89 Hun, 67, 35 N. Y. Supp. 82; Kennedy v.

Budd (1896), 5 App. Div. 140, 39 N. Y. Supp. 81; Sinnott v. German-American Bank (1900), 164 N. Y. 386, aff'g 33 App. Div. 641; Vandergrift v. Bertron (1903), 83 App. Div. 548, 82 N. Y. Supp. 153; Loeb v. Firemen's Ins. Co. (1903), 78 App. Div. 113, 79 N. Y. Supp. 510, aff'g 38 Misc. 107, 77 N. Y. Supp. 106; Castle Bros. v. Graham (1903), 87 App. Div. 97, 84 N. Y. Supp. 120; Marino v. Lehmaier (1903), 173 N. Y. 530-546; Cody v. Dempsey (1903), 86 App. Div. 341, 83 N. Y. Supp. 899; Slater v. Slater (1903), 78 App. Div. 453, 80 N. Y. Supp. 363; McArdle v. Thames Iron Wks. (1904), 96 App. Div. 140, 89 N. Y. Supp. 485; see also Barron v. Yost, 16 Daly, 441; Rosenheim v. Rosenfield, 12 N. Y. Supp. 721.

§ **925. Frauds on hotel-keepers.**

A person who obtains any lodging, food or accommodation at a hotel, inn, boarding-house or lodging-house, except an immigrant lodging-house, without paying therefor, with intent to defraud the proprietor thereof or his agent or servant; or who obtains credit at such hotel, inn, boarding-house or lodging-house, by the use of any false pretense; or who, after obtaining credit or accommodation at such hotel, inn, boarding-house or lodging-house, causes to be removed from such hotel, inn, boarding-house or lodging-house his baggage without the permission or consent of the proprietor, manager or authorized employee thereof before paying for his lodging, food or accommodation, and with the intention of not paying therefor, is guilty of a misdemeanor.

Derivation: Penal Code, § 382, amended L. 1886, ch. 645, § 1; L. 1895, ch. 883, § 1; L. 1907, ch. 682, § 1.

People v. Nicholson (1898), 25 Misc. 266, 55 N. Y. Supp. 447.

§ **926. False rumors as to stocks, bonds or public funds.**

A person, who, with intent to affect the market price of the public funds of this state or of the United States, or of any state or territory thereof, or of a foreign county or government, or of the stocks, bonds, or other evidences of debt of a corporation or association, or the market price of gold or silver coin or bullion, or any merchandise or commodity whatever:

1. Without lawful authority, falsely signs the name of an officer of a corporation, or of any other person to a letter, message, or other paper; or,

2. Utters or circulates such a letter, message, or paper, knowing that the same has been so falsely signed; or,

3. Knowingly circulates any false statement, rumor, or intelligence,

Is punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than three years, or both.

Derivation: Penal Code, § 435.

People v. Goslin (1901), 67 App. Div. 16, 18, 73 N. Y. Supp. 520, 16 N. Y. Cr. 257.

§ 927. Entry into agricultural fair grounds.

A person who wrongfully and fraudulently enters any agricultural fair grounds, without paying the entrance fee, is guilty of a misdemeanor.

Derivation: Penal Code, § 446.

§ 928. Falsely personating another.

A person who falsely personates another, and, in such assumed character:

1. Marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of the latter; or,

2. Becomes bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety; or,

3. Confesses a judgment; or,

4. Subscribes, verifies, publishes, acknowledges, or proves a written instrument, which by law may be recorded, with intent that the same may be delivered or used as true; or,

5. Does any other act, in the course of any action or proceeding, whereby, if it were done by the person falsely personated, such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender, or to another person,

Is punishable by imprisonment in a state prison for not more than ten years.

Derivation: Penal Code, § 562.

Hodecker v. Strickler (1897), 20 App. Div. 245, 46 N. Y. Supp. 808.

§ 929. Limitations as to indictments for fraudulent marriages.

An indictment can not be found, for the crime specified in subdivision first of the last section, except upon the complaint of the

person injured, if there be any such person living, and within two years after the perpetration of the crime.

Derivation: Penal Code, § 563.

§ 930. Receiving property in false character.

A person who falsely personates another, or the officer or agent of any legally organized or incorporated society or institution, or falsely represents himself to be such an officer or agent, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual, or society, or institution or its officers or agents, so personated, or whose officer or agent he falsely claims to be, with the intent to convert the same to his own use or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny, of the money or property so received.

Derivation: Penal Code, § 564, amended L. 1899, ch. 327, § 1.

§ 931. Personating officers, firemen, and other persons.

A person who falsely personates a public officer, civil or military, or a policeman, or a private individual having special authority by law to perform an act affecting the rights or interests of another, or who assumes, without authority, any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character does an act, purporting to be official, whereby another is injured or defrauded, is guilty of a misdemeanor.

Derivation: Penal Code, § 565.

McCord v. People (1871), 46 N. Y. 470; Curtin v. People (1882), 26 Hun, 564, aff'd 89 N. Y. 621; People v. Stetson, 4 Barb. 151.

§ 932. Obtaining property by false pretenses.

A person who, with intent to cheat or defraud another, designedly, by color or aid of a false token or writing, or other false pretense, obtains the signature of any person to a written instrument, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than three times the value of the money or property affected or obtained thereby, or by both such fine and imprisonment.

Derivation: Penal Code, § 566.

Lesser v. People (1878), 12 Hun, 668; Brown v. People (1879), 16 Hun, 535; People ex rel. Phelps v. Oyer, etc. (1880), 83 N. Y. 436; Therasson v. People (1880), 20 Hun, 55, 82 N. Y. 238; People v. Jefferey (1894), 82 Hun, 413, 31 N. Y. Supp. 267; see also People v. Cole, 20 N. Y. Supp. 505; Rex v. Jackson, 3 Campb. 370; Rex v. Parker, 3 Car. & P. 825.

§ 933. False pedigree of animals.

Every person who by any false pretence shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals the registration of any animal in the herd register or other register of any such club, association, society or company or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 566a, added L. 1887, ch. 153, § 1.

§ 934. Fraudulently obtaining property for charitable purposes.

A person, who wilfully, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or any money or property, for any alleged or pretended charitable or benevolent purpose, is punishable by imprisonment for not less than one nor more than three years, or by a fine to an amount not exceeding the value of the money or property obtained, or by both.

Derivation: Penal Code, § 567.

People v. Clough, 17 Wend. 351.

§ 935. Obtaining by fraud or without authority signature to applications or property for degrees, secrets or membership in secret fraternities.

A person who wilfully by color or aid of any false token or writing, or other false pretense or false statement verbal or written, or without authority of the grand lodge hereinafter mentioned, obtains the signature of any person to any written application, or any money or property for any alleged or pretended degree, or

for any alleged or pretended secret work or for any alleged or pretended secrets of, or membership in any secret fraternal association, society, order or organization having a grand lodge in this state, or in any subordinate lodge or body thereof is punishable by imprisonment for not more than three years or by a fine to an amount not exceeding the value of the money or property obtained or by both.

Derivation: Penal Code, § 567a, added L. 1905, ch. 366, § 1.

§ **936. Fraudulent use of the name or title of secret fraternity.** Any person, firm, association, society, order or organization, or any officer, agent, representative or employee thereof, or person acting or pretending to act on behalf thereof who in a newspaper or other publication published in this state, or in any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device without authority of the grand lodge hereinafter mentioned fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for ten years, or any imitation of such name or title or any name or title so nearly resembling it as to be calculated to deceive, or who without such authority publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device directly or indirectly advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization, or in any alleged or pretended association, society, order or organization using or designated or claimed to be known by such title or imitation or re-

semblance thereof or who therein or thereby offers to sell, or to confer or to communicate or to give information directly or indirectly where, how, of whom, or by what means any alleged or pretended degree or any alleged or pretended secret work or any alleged or pretended secrets of such secret fraternal association, society, order or organization or of any alleged or pretended association, society, order or organization designated or claimed to be known by such title or imitation or resemblance thereof can or may be obtained, conferred or communicated, is punishable by imprisonment for not more than three years or by a fine of not more than one thousand dollars for each offense.

Derivation: Penal Code, §567b, added L. 1906, ch. 485, §1.

§ 936-a. Unlawful dues or assessments of certain secret fraternities.

Any person or persons acting as the general officer, chief officer, grand officer or supreme, or grand officers or body, in and for a secret fraternal association, society, order or organization, which maintains in this state local branches, lodges, nests, aeries, divisions, chapters or subdivisions, who shall solicit, receive, invite, admit or initiate any person or persons to membership or to participation in any such local branch, lodge, nest, aerie, division, chapter or subdivision, upon condition that such person shall pay any dues, assessments, money or reward, directly or indirectly, to any grand officer, chief officer, grand officer or supreme, or grand officers or body, unless such grand officer, chief officer, grand officer or supreme, or grand officers or body shall have been chosen or elected by and from delegates chosen by the members of the local branches, lodges, nests, aeries, divisions, chapters or subdivisions

of such secret fraternal association, society, order or organization to their regular convention at which such chief officer shall be elected, shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars or more than two hundred dollars, or by not more than thirty days' imprisonment or by both. (Added by L. 1911, ch. 837, in effect July 29, 1911.)

§ **937. Obtaining negotiable evidence of death by false pretenses.**

If the false token, by which money or property is obtained in violation of sections nine hundred and thirty-two and nine hundred and thirty-four, is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in a state prison not exceeding seven years, instead of by the punishments prescribed by those sections.

Derivation: Penal Code, § 568.

People v. Rynders, 12 Wend. 425.

§ **938. Using false check or order for payment of money.**

The use of a matured check, or other order for the payment of money, as a means of obtaining a signature, or money or property, such as is specified in sections nine hundred and thirty-two and nine hundred and thirty-four, by a person who knows that the drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representations is made in respect thereto.

Derivation: Penal Code, § 569.

Lesser v. People (1878), 12 Hun, 668, 73 N. Y. 78; Foote v. People (1879), 17 Hun, 218; People v. Clements (1886), 42 Hun, 286, 5 N. Y. Cr. 280; Sieling v. Clark (1896), 18 Misc. 464, 41 N. Y. Supp. 982; see also People v. Tompkins, 1 Park, 224; People v. Ward, 15 Wend. 231; Conger's Case, 4 C. H. Rec. 65.

§ **939. Fraudulently obtaining employment.**

A person who obtains employment or appointment to any office or place of trust by color or aid of any false or forged letter or certificate of recommendation, or of any false statement in writing, as to his name, residence, previous employment or qualification; or any person who shall wilfully and intentionally fraudulently represent himself, or herself, to be a deaf and dumb person, in order to collect, receive or otherwise obtain moneys, food, clothing, or anything of value whatsoever, is guilty of a misdemeanor.

Derivation: Penal Code, § 570, amended L. 1886, ch. 654, § 1.

§ **940. Fraudulently secreting personal property.**

A person who, having theretofore executed a mortgage of personal property, or any instrument intended to operate as such, sells, assigns, exchanges, secrets or otherwise disposes of any part of the property, upon which the mortgage or other instrument is at the time a lien, with intent thereby to defraud the mortgagee or a purchaser thereof, is guilty of a misdemeanor.

Derivation: Penal Code, § 571, added L. 1882, ch. 384, § 1.

People ex rel. Stokes v. Risely (1885), 38 Hun, 281, 4 N. Y. Cr. 110; People v. Durante (1897), 19 App. Div. 292, 45 N. Y. Supp. 1073, 12 N. Y. Cr. 318; People v. Staton (1903), 79 App. Div. 634, 80 N. Y. Supp. 2; see also Vaus v. Middlebrook, 3 N. Y. St. 277; Millechamp v. People, 14 Week. Dig. 452.

§ **941. Pawning borrowed property.**

A person who without the consent of the owner thereof, sells, pledges, pawns, or otherwise disposes of any property which he has borrowed or hired from the owner, is guilty of a misdemeanor; but this section does not apply to a person leasing or lending property, for a time not exceeding that for which the same was leased or lent to himself.

Derivation: Penal Code, § 572, added L. 1882, ch. 384, § 1; amended L. 1892, ch. 692, § 1.

§ **942. Personating beneficiary of entrance ticket.**

A person who, with intent to wrongfully convert to his own use the benefits secured by any ticket, contract, or other paper or writing, appearing upon its face not negotiable, and which entitles, or purports to entitle the person whose name appears therein, to entrance upon the grounds or premises of a membership corporation, or being thereupon, to remain upon such grounds or premises, falsely personates or attempts to so personate any individual named in such ticket, contract or other paper or writing, as the grantee or beneficiary thereof, is guilty of a misdemeanor.

Derivation: Penal Code, § 573, amended L. 1892, ch. 692, § 1.

§ **943. Mock auction.**

A person who buys or sells, or pretends to buy or sell, any goods, wares, or merchandise, or any species of property, except ships, vessels, or real or leasehold estate, exposed for sale by auction, if

an actual sale, purchase, and change of ownership therein does not thereupon take place, is guilty of a misdemeanor, punishable by imprisonment for thirty days, or by fine not exceeding one hundred dollars, or both.

A person, who obtains money or property from another, or obtains the signature of another to any writing, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in a state prison not exceeding three years, or in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and in addition thereto he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

Derivation: Penal Code, §§ 443, 574.

People v. Lindenborn (1897), 23 Misc. 426, 52 N. Y. Supp. 101, 13 N. Y. Cr. 195.

§ 944. Publishing false messages.

A person who prints, publishes, or circulates as true, any message, order or proclamation, purporting to be the message, order or proclamation of the executive of the United States or of this state, or of any other state of the United States now or hereafter admitted, or of any territory of the United States, knowing the same not to be genuine, is punishable by imprisonment in a state prison not exceeding five years, or by fine not exceeding one thousand dollars, or by both. An indictment for this offense may be found in any county in which the message, address or proclamation is printed, published or circulated, but not in more than one county of the State.

Derivation: Penal Code, § 674.

People v. Most (1901), 36 Misc. 139, 140, 73 N. Y. Supp. 220, 16 N. Y. Cr. 106, aff'd 71 App. Div. 160, 171 N. Y. 423.

§ 945. Unlawfully selling tickets for balls and entertainments.

Any person who shall collect money or attempt to collect money or any valuable article, or to sell tickets for any ball or entertainment for the benefit of any pretended benevolent, humane, or charitable organization, which has no corporate existence, or for

any benevolent, humane, or charitable institution, that has been duly incorporated or recognized by the authorities of the state of New York, without first having obtained written authority of the officers of the said institution or organization, attested under the seal of the said institution, according to its rules, shall be guilty of a misdemeanor.

Derivation: Penal Code, § 674f, added L. 1899, ch. 327, § 2.

§ **946. Misrepresentation of circulation of newspapers or periodicals.**

Every proprietor or publisher of any newspaper or periodical who shall wilfully or knowingly misrepresent the circulation of such newspaper or periodical for the purpose of securing advertising or other patronage shall be deemed guilty of a misdemeanor.

Derivation: Penal Code, § 717a, added L. 1893, ch. 650, § 1.

§ **947. Verbal false pretense not criminal.**

A purchase of property by means of a false pretense is not criminal, where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged.

Derivation: Part of Penal Code, ch. 544, as amended L. 1905, ch. 556, § 1. For remainder of section, see § 442, *ante*.

Watson v. People (1882), 87 N. Y. 561; People v. Moore (1885), 37 Hun, 93, 3 N. Y. Cr. 468; People v. Dumar (1887), 106 N. Y. 502, 8 N. Y. Cr. 268, rev'g 42 Hun, 86, 5 N. Y. Cr. 55; People v. Page (1889), 4 N. Y. Supp. 780, 7 N. Y. Cr. 6; People v. Hart (1901), 35 Misc. 182, 71 N. Y. Supp. 492; People ex rel. Cochrane v. Hyatt (1902), 172 N. Y. 176, 187; People v. Rothstein (1904), 180 N. Y. 149, aff'g 95 App. Div. 293, 88 N. Y. Supp. 622, 18 N. Y. Cr. 449, 42 Misc. 124, 85 N. Y. Supp. 1076, 18 N. Y. Cr. 66; People v. Snyder (1906), 110 App. Div. 699, 700, 97 N. Y. Supp. 469; People v. Levin (1907), 119 App. Div. 234, 104 N. Y. Supp. 647, 21 N. Y. Cr. 182.

§ **948. Unlawful use of name of benevolent, humane or charitable corporation.**

No person, society or corporation shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use the name of a benevolent, humane or charitable organization incorporated under the laws of this state, or a name so nearly resembling it as to be calculated to deceive the public with respect to any such corporation. A violation of this

section shall be a misdemeanor. Whenever there shall be an actual or threatened violation of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain said actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact using the name of a benevolent, humane or charitable organization, incorporated as aforesaid, or a name so nearly resembling it as to be calculated to deceive the public, an injunction may be issued by said court or justice, enjoining and restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.

Derivation: Penal Code, § 674h, added L. 1908, ch. 449.

§ 949. Fraudulent appropriation of lost treasure or waived property.

A person who fraudulently conceals or appropriates to his own use any lost treasure or any waived property belonging to this state by virtue of its sovereignty, is guilty of a misdemeanor.

Derivation: Penal Code, § 482.

See N. Y. Law Journal, Apr. 13, 1904.

§ 950. False statements in regard to employment.

Any person, firm, association or corporation, or any employee or agent thereof, who makes to any person furnishing or seeking employment any statement which is false, knowing the same to be false, in regard to any employment, work or situation, its nature, location, duration, wages, or salary attached thereto, or the circumstances surrounding the said employment, work, or situation, or who shall offer or hold himself out as in a position to secure or furnish employment without having an order therefor or such employment to be filled or shall misrepresent any other material matter in connection with said employment, work, or situation, and by reason of such statement, offer, holding out or misrepresentation, any person shall seek the employment, work or situation, in respect to which such statement, offer, holding out or misrepresentation was made, shall be guilty of a misdemeanor. (Added by L. 1911, ch. 575, in effect June 30, 1911.)

ARTICLE 88.

GAMBLING.

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§ 970. Common gambler.

A person who is the owner, agent, or superintendent of a place, or of any device, or apparatus, for gambling; or who hires, or allows to be used a room, table, establishment or apparatus for such a purpose; or who engages as dealer, game-keeper, or player in any gambling or banking game, where money or property is dependent upon the result; or who sells or offers to sell what are commonly called lottery policies, or any writing, paper, or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery; or who in-

dorses or uses a book, or other document, for the purpose of enabling others to sell, or offer to sell, lottery policies, or other such writings, papers, or documents, is a common gambler, and punishable by imprisonment for not more than two years, or by a fine not exceeding one thousand dollars, or both.

Derivation: Penal Code, § 344.

Pickett v. People (1876), 8 Hun, 83, aff'd 67 N. Y. 609; People v. Dunn (1882), 90 N. Y. 104, rev'g 27 Hun, 272; People v. Emerson (1888), 6 N. Y. Cr. 157, 5 N. Y. Supp. 374; People v. Dewey (1891), 11 N. Y. Supp. 602, aff'd 128 N. Y. 606; People v. O'Malley (1900), 52 App. Div. 46, 64 N. Y. Supp. 843; People v. McKenna (1901), 62 App. Div. 328, 70 N. Y. Supp. 1057; People ex rel. Joseph v. Jerome (1901), 34 Misc. 576, 70 N. Y. Supp. 377; People ex rel. Lewisohn v. General Sessions (1904), 96 App. Div. 202, 203, 89 N. Y. Supp. 364; People v. Engeman (1908), 129 App. Div. 463; People ex rel. Collins v. McLaughlin (1908), 128 App. Div. 605; see also People v. Borges, 6 Abb. Pr. 132.

§ 971. Keeping gambling apparatus in certain places.

It is unlawful to keep or use any table, cards, dice or any other article or apparatus whatever, commonly used or intended to be used in playing any game of cards or faro, or other game of chance, upon which money is usually wagered, at any of the following places:

1. Within a building, or the appurtenances or grounds connected with any building, in which a court of justice usually holds its sessions; or a building, any part of which is usually occupied by a religious corporation, or an incorporated benevolent, charitable, scientific or missionary society, or an incorporated academy, high school, college or other institution of learning, a library company, or building and mutual loan company; or,

2. Within any building, or the appurtenances or grounds connected with any building, while votes are received or canvassed therein at any election for an officer of this state, or of the United States; or while any public meeting is held therein; or,

3. Within the distance of one mile from the grounds upon which any training, review, drill or exercise of a military organization, created or permitted by the laws of this state, is proceeding, or upon which any public fair, exhibition, exercise or meeting is held in the open air; or,

4. Within any vessel lying in, or navigating, any of the waters of this state; or owned, or navigated by, or for account of any *corporation* created by the laws of this state.

A person who knowingly violates this section is guilty of a misdemeanor.

Derivation: Penal Code, §§ 336-337.

Hitchins v. People (1868), 39 N. Y. 454, Book VIII (reprint), 732, note; Story v. Solomon (1877), 71 N. Y. 420, aff'g 6 Daly, 531; People v. Todd (1889), 51 Hun, 446, 4 N. Y. Supp. 25; People ex rel. Lawrence v. Fallon (1897), 152 N. Y. 12, aff'g 4 App. Div. 82, 39 N. Y. Supp. 865; People v. Adams (1903), 176 N. Y. 356; People ex rel. Collins v. McLaughlin (1908), 128 App. Div. 604; see also Rockwood v. Oakfield, 2 N. Y. St. 331; People v. Sergeant, 8 Cow. 139; Murphy v. Board of Police, 11 Abb. N. C. 340; Cascadden's Case, 2 City Hall Rec. 53; Lyner's Case, 5 City Hall Rec. 156; Wetmore v. State, 55 Ala. 198; Toney v. State, 61 Ala. 1; Ansley v. State, 36 Ark. 67, 38 Am. Rep. 29; State v. Wade, 43 Ark. 77, 51 Am. Rep. 560; Gridley v. Dorn, 57 Cal. 78, 40 Am. Rep. 110; Boughner v. Meyer, 5 Colo. 71, 40 Am. Rep. 139; Dyer v. Benson, 69 Ga. 609; Harbaugh v. People, 40 Ill. 294; Garrison v. McGregor, 51 Ill. 473; Wade v. Deming, 9 Ind. 35; Hamilton v. State, 17 Ind. 586; Schlosser v. Smith, 93 Ind. 83; State v. Bishel, 39 Iowa, 42; State v. Book, 41 Iowa, 550, 20 Am. Rep. 609; Ward v. State, 17 Iowa St. 32; Ellis v. Beale, 18 Me. 337; Shaw v. Clark, 49 Mich. 494, 43 Am. Rep. 474; People v. Weithoff, 51 Mich. 203, 47 Am. Rep. 557, 4 Crim. L. Mag. 682; Lowerey v. State, 1 Mo. 722; Kennow v. King, 2 Mont. 437; Brenniger v. Belvidere, 44 N. J. L. 350; State v. Bishop, 8 Ired. (N. C.) 266; Whitney v. State, 10 Tex. Ct. App. 377; Long v. State, 22 Tex. Ct. App. 194, 54 Am. Rep. 633; Wolz v. State, 33 Tex. 331; Mayo v. State (Tex.), 82 S. W. 515; Coolidge v. Choate, 11 Metc. 79; Nuckolls v. Com., 32 Gratt. 884; Hirst v. Molesbury, L. R. 6 Q. B. 130; Bews v. Harston, 3 Q. B. Div. 454, 28 Eng. Rep. 385; Tollett v. Thomas, L. R. 6 Q. B. 514; Alexander v. State, 6 Crim. L. Mag. 506; State v. Records, 4 Harr. 544; State v. Leighton, 3 Fost. 167.

§ 972. Gambling apparatus declared a nuisance.

An article or apparatus maintained or kept in violation of section nine hundred and seventy-one, is a public nuisance.

Derivation: Penal Code, § 338.

§ 973. Keeping gaming and betting establishments.

Any corporation or association or the officers thereof or any copartnership or individual, who keeps a room, shed, tent, tenement, booth, building, float or vessel, or any other enclosure or place, or any part thereof, used for gambling, or for any purpose or in any manner forbidden by this article, or for making any wagers or bets made to depend upon any lot, chance, casualty, unknown or contingent event or on the future price of stocks, bonds, securities, commodities or property of any description whatever or for making any contract for or on account of any money, property or thing in action, so bet or wagered, or being

the owner or agent, knowingly lets or permits the same to be so used, is guilty of a misdemeanor. This section shall not be extended so as to prohibit or in any manner affect any insurance made in good faith for the security or indemnity of the party insured and which is not otherwise prohibited by law, nor to any contract on bottomry or respondentia. (Amended by L. 1910, ch. 487, in effect Sept. 1, 1910.)

Derivation: Penal Code, § 343, amended; L. 1889, ch. 428, § 1; L. 1895, ch. 571, § 1.

People v. Todd (1889), 51 Hun, 446, 4 N. Y. Supp. 25, 6 N. Y. Cr. 220; People v. Wade (1899), 13 N. Y. Cr. 425, 59 N. Y. Supp. 846; Dexter v. Press Pub. Co. (1901), 36 Misc. 388, 73 N. Y. Supp. 706; People v. Levoy (1902), 72 App. Div. 55, 57, 76 N. Y. Supp. 783; People v. Stedeker (1903), 175 N. Y. 62, rev'g 75 App. Div. 449, 78 N. Y. Supp. 316; People ex rel. Collins v. McLaughlin (1908), 128 App. Div. 605.

§ 974. Keeping of place for game of policy.

A person who keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for policy playing or for the sale of what are commonly called "lottery policies," or who delivers or receives money or other valuable consideration in playing policy, or in aiding in the playing thereof, or for what is commonly called a "lottery policy," or for any writing, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery; or who shall have in his possession, knowingly, any writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called "policy," or in the nature of a bet, wager or insurance, upon the drawing or drawn numbers of any public or private lottery; or any paper, print, writing, numbers, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called "policy;" or who is the owner, agent, superintendent, janitor or caretaker of any place, building, or room where policy playing or the sale of what are commonly called "lottery policies" is carried on with his knowledge or after notification that the premises are so used, permits such use to be continued, or who aids, assists, or abets in any manner, in any of the offenses, acts or matters herein named, is a common gambler, and punishable by imprisonment for not more than two years, and in the discretion of the court, by a fine not exceeding one thousand dollars or both.

Derivation: *Penal* Code, § 344a, added L. 1901, ch. 190, § 1.

People ex rel. Wilson v. Flynn (1902), 72 App. Div. 67, 76 N. Y. Supp. 293, 16 N. Y. Cr. 491, aff'g 37 Misc. 87, 74 N. Y. Supp. 731, 16 N. Y. Cr. 280; People v. Adams (1903), 176 N. Y. 351, aff'g 85 App. Div. 390, 83 N. Y. Supp. 481; People ex rel. Adams v. Johnson (1904), 44 Misc. 550, 90 N. Y. Supp. 134; Matter of Baker (1904), 94 App. Div. 279, 87 N. Y. Supp. 1022; People ex rel. Schneider v. Hayes (1905), 108 App. Div. 7, 95 N. Y. Supp. 471, 19 N. Y. Cr. 511; see also Boyd v. United States, 116 U. S. 616; State v. Sheridan (Iowa), 96 N. W. 730.

§ 975. Possession of policy slips.

The possession, by any person other than a public officer, of any writing, paper, or document representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called "policy," or in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers or device, policy slip, or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called "policy," is presumptive evidence of possession thereof knowingly and in violation of the provisions of section nine hundred and seventy-four.

Derivation: Penal Code, § 344b, added L. 1901, ch. 190, § 1.

People v. Cannon (1893), 139 N. Y. 32, 36 Am. St. Rep. 668, aff'g 63 Hun, 306, 18 N. Y. Supp. 25; People ex rel. Wilson v. Flynn (1902), 72 App. Div. 67, 69, 76 N. Y. Supp. 293, 16 N. Y. Cr. 493, 37 Misc. 87, 74 N. Y. Supp. 731, 16 N. Y. Cr. 280; People v. Adams (1903), 176 N. Y. 351, aff'g 85 App. Div. 390, 83 N. Y. Supp. 481.

§ 976. Removal of tenants using premises for game of policy.

Any person having information of any place, building or room where policy playing or the sale of what are commonly called "lottery policies" is carried on, may serve personally upon the owner, landlord, agent, superintendent, janitor or caretaker of the premises, so used or occupied, a written notice, requiring the owner, landlord, agent, superintendent, janitor or caretaker, to make an application for the removal of the person so using or occupying the same. If the owner, landlord, agent, superintendent, janitor or caretaker, does not make such an application within five days thereafter, or, having made it, does not in good faith diligently prosecute it, the person giving the notice may make such an application, stating in his petition, the facts so entitling him to make it. Such an application has the same effect, as if the

applicant was the landlord or lessor of the premises. The omission, or neglect of the owner, landlord, agent, superintendent, janitor or caretaker, to make such an application, or, having made it, the omission or neglect to in good faith diligently prosecute it, shall be presumptive evidence against the person on whom such notice shall be served of a violation of the provisions of section nine hundred and seventy-four. And in case the person giving said notice shall make an application as hereinbefore provided, and a final order shall be made as specified in section twenty-two hundred and forty-nine of the code of civil procedure, such order shall be evidence of a violation of the provisions of section nine hundred and seventy-four by the occupant of said premises and by the person on whom the notice herein provided for shall have been served. For the purpose of such applications, summary proceedings to recover possession of the premises so used or occupied may be maintained under the provisions of chapter seventeen, title two, of the code of civil procedure.

Derivation: Penal Code, § 344c, added L. 1901, ch. 190, § 1.

§ 977. Seizure of gambling implements authorized.

A person, who is required or authorized to arrest any person for a violation of the provisions of this article, is also authorized and required to seize any table, cards, dice or other apparatus or article, suitable for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person arrested is required to be taken.

Derivation: Penal Code, § 345.

Willis v. Warren, 17 How. Pr. 100, 1 Hilt. 590.

§ 978. Gambling implements to be destroyed or delivered to district attorney.

The magistrate, to whom any thing suitable for gambling purposes is delivered pursuant to the last section, must, upon the examination of the defendant, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him, and whether it was actually employed by the defendant in violation of the provisions of this article; and if he finds that it is of a character suitable for gambling purposes, and that it has been used by the defendant in

violation of this article, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice may, in his opinion, require.

Derivation: Penal Code, § 346.

Lawton v. Steele (1890), 119 N. Y. 226, aff'g 5 N. Y. Supp. 953; see also Willis v. Warren, 17 How. Pr. 100, 1 Hilt. 590; Lowry v. Rainwater, 70 Mo. 152, 35 Am. Rep. 420, 21 Alb. L. J. 73; State v. Robbins, 124 Ind. 308, 8 L. R. A. 438.

§ 979. Gambling implements to be destroyed upon conviction.

Upon the conviction of the defendant, the district attorney must cause to be destroyed every thing suitable for gambling purposes, in respect whereof the defendant stands convicted, and which remains in the possession or under the control of the district attorney.

Derivation: Penal Code, § 347.

Willis v. Warren, 17 How. Pr. 100, 1 Hilt. 590.

§ 980. Persuading person to visit gambling places.

A person, who persuades another to visit any building or part of a building, or any vessel or float, occupied or used for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to such other person in an amount equal to any money or property there lost by him at play, to be recovered in a civil action.

Derivation: Penal Code, § 348.

People v. Todd (1889), 6 N. Y. Cr. 222, 4 N. Y. Supp. 25.

§ 981. Duty of masters to suppress gambling on board their vessels.

If the commander, owner or hirer of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, or if he does not, upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceedingly five hundred dollars; and in addition thereto is liable to any party losing money or property by means of gambling in

violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

Derivation: Penal Code, § 350.

People v. Todd (1889), 6 N. Y. Cr. 222, 4 N. Y. Supp. 25.

§ 982. Keeping slot machines.

Any person who has in his possession, or under his control, or who permits to be placed, maintained or kept in any room, space, inclosure or building, owned, leased or occupied by him, or under his management or control, any machine, apparatus or device, into which may be, or might have been, inserted any piece of money or other object, and from which, as a result of such insertion, or as a result of such insertion and the application of physicial or mechanical force, may issue, or might have issued, any piece or pieces of money, or any check or memoranda calling for any money, and which machine, apparatus or device is commonly known as a slot machine, is guilty of a misdemeanor.

Derivation: Penal Code, § 337a, added L. 1899, ch. 655, § 1.

§ 983. Seizures of slot machines and arrest of person in possession.

It shall be the duty of every officer authorized to make arrests to seize every machine, apparatus or device answering to the description contained in the last section and to arrest the person actually or apparently in possession or control thereof or of the premises in which the same may be found, if any such person be present at the time of the seizure, and to bring the machine, apparatus or device, and the prisoner, if there be one, before a committing magistrate.

Derivation: Penal Code, § 337b, added L. 1899, ch. 655.

§ 984. Destruction of slot machines by magistrates.

The magistrate before whom any machine, apparatus or device is brought pursuant to the last section must, if there be a prisoner, and if he shall hold such prisoner, cause the machine, apparatus or device to be delivered to the district attorney of the county to be used as evidence on the trial of the said prisoner. If there

be no prisoner or if the magistrate does not hold the prisoner, he must cause the immediate destruction of the machine, apparatus or device.

Derivation: Penal Code, § 337c, added L. 1899, ch. 655, § 1.

§ 985. Destruction of slot machines by the trial court.

It shall be the duty of the district attorney of the county to see that every person held in pursuance of the last section shall be brought to trial within thirty days from the date of his final examination before the magistrate; and the machine, apparatus or device shall be produced in court on the trial. It shall be the duty of the trial court, after the disposition of the case, and whether the defendant be convicted, acquitted or fails to appear for trial, to cause the immediate destruction of the machine, apparatus or device.

Derivation: Penal Code, § 337d, added L. 1899, ch. 655, § 1.

§ 986. Pool-selling, book-making, bets and wagers.

Any person who engages in pool-selling, or book-making, with, or without writing at any time or place; or any person who keeps or occupies any room, shed, tenement, tent, booth, or building, float or vessel, or any part thereof, or who occupies any place or stand of any kind, upon any public or private grounds, within this state, with books, papers, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers, or of selling pools, and any person who records or registers bets or wagers, or sells pools or makes book, with, or without writing upon the result of any trial or contest of skill, speed or power of endurance, of man or beast, or upon the result of any political nomination, appointment or election; or upon the result of any lot, chance, casualty, unknown or contingent event whatsoever; or any person who receives, registers, records or forwards, or purports or pretends to receive, register, record or forward, in any manner whatsoever, any money, thing or consideration of value, bet or wagered, or offered for the purpose of being bet or wagered, by or for any other person, or sells pools, upon any such result; or any person who, being the owner, lessee or occupant of any room, shed, tenement, tent, booth or building, float or vessel, or part thereof, or of any grounds within this state, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depositary for gain, hire or

reward, of any money, property or thing of value, staked, wagered or pledged, or to be wagered or pledged upon any such result; or any person who aids, assists or abets in any manner in any of the said acts, which are hereby forbidden, is guilty of a misdemeanor, and upon conviction is punishable by imprisonment in a penitentiary or county jail for a period of not more than one year. (Amended by L. 1910, ch. 488, in effect Sept. 1, 1910.)

Derivation: Penal Code, § 351, as amended L. 1895, ch. 572; L. 1901, ch. 636; L. 1908, ch. 507.

People v. Bauer (1885), 37 Hun, 407, 3 N. Y. Cr. 433; People v. Kelly (1885), 3 N. Y. Cr. 272, 22 Week. Dig. 64; People ex rel. Ottolengui v. Barbour (1887), 5 N. Y. Cr. 384; Brennan v. Brighton Beach Assn. (1890), 56 Hun, 188, 9 N. Y. Supp. 220; De Lacy v. Adams (1893), 3 Misc. 432, 23 N. Y. Supp. 297; Gideon v. Dwyer (1895), 87 Hun, 246, 254, 33 N. Y. Supp. 754; People v. Cleary (1895), 13 Misc. 546, 35 N. Y. Supp. 588; People ex rel. Weaver v. Van De Carr (1896), 150 N. Y. 439, aff'g 7 App. Div. 608, 39 N. Y. Supp. 581; Grannan v. Westchester, etc., Assn. (1897), 16 App. Div. 8, 44 N. Y. Supp. 790; People ex rel. Sturgis v. Fallon (1897), 152 N. Y. 1, 12 N. Y. Cr. 273; People v. Levoy (1902), 72 App. Div. 55, 16 N. Y. Cr. 496, 76 N. Y. Supp. 783; People ex rel. Clifton v. DeBragga (1902), 73 App. Div. 579, 17 N. Y. Cr. 12, 77 N. Y. Supp. 7; People ex rel. Allen v. Hagan (1902), 170 N. Y. 46, 16 N. Y. Cr. 309; People v. Stedeker (1902), 75 App. Div. 450, 78 N. Y. Supp. 316, rev'd 175 N. Y. 57; People v. Shannon (1903), 87 App. Div. 32, 17 N. Y. Cr. 532, 83 N. Y. Supp. 1061; People v. McCue (1903), 87 App. Div. 72, 83 N. Y. Supp. 1088, 17 N. Y. Cr. 534; People ex rel. Sterling v. Sheriff (1908), 60 Misc. 326; People v. Ebel (1904), 98 App. Div. 270, 90 N. Y. Supp. 628; People v. Corbalis (1904), 178 N. Y. 516, rev'g 86 App. Div. 531, 83 N. Y. Supp. 782; People v. Canepi (1905), 181 N. Y. 400, 19 N. Y. Cr. 384, rev'g 93 App. Div. 379, 87 N. Y. Supp. 773; Cranshaw v. McAdoo (1905), 47 Misc. 420, 421, 94 N. Y. Supp. 386; Matter of Cullen v. N. Y. Tel. Co. (1905), 106 App. Div. 250, 251, 94 N. Y. Supp. 290; Matter of Joerns (1906), 51 Misc. 395, 100 N. Y. Supp. 503; Stevens v. McAdoo (1906), 112 App. Div. 459, 98 N. Y. Supp. 553; Cleary v. McAdoo (1906), 113 App. Div. 179, 99 N. Y. Supp. 60; Devlin v. McAdoo (1906), 116 App. Div. 226, 101 N. Y. Supp. 646; Murray v. Interurban St. Ry. Co. (1907), 118 App. Div. 37, 102 N. Y. Supp. 1026; People ex rel. Collins v. McLaughlin (1908), 128 App. Div. 601, 60 Misc. 307; see also Corrigan v. Coney Island Jockey Club, 27 Abb. N. C. 300; Gibbons v. Gouverneur, 1 Den. 170.

§ 987. Racing animals for stake.

All racing or trial of speed between horses or other animals for any bet, stake or reward, except such as is allowed by special laws, is a public nuisance; and every person acting or aiding therein, or making or being interested in any such bet, stake or reward is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits to the people of this state, all title

or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof.

Derivation: Penal Code, § 352.

Matter of Dwyer (1894), 14 Misc. 204, 35 N. Y. Supp. 884, 87 Hun, 254; People ex rel. Lawrence v. Fallon (1897), 152 N. Y. 12, aff'g 4 App. Div. 82, 39 N. Y. Supp. 865; French v. Matteson (1901), 34 Misc. 426, 69 N. Y. Supp. 869; Moulton v. Westchester Racing Assn. (1904), 42 Misc. 487, 491, 84 N. Y. Supp. 871.

§ 988. Cheating at gambling.

A person who, by any fraud, or false pretense whatsoever, while playing at any game, or while having a share in any wager played for, or while betting on the sides or hands of such as play, wins, or acquires to himself, or to any other, a sum of money or other valuable thing, is guilty of a misdemeanor.

Derivation: Penal Code, § 339.

People ex rel. Collins v. McLaughlin (1908), 60 Misc. 310; Gilpin v. Daly (1891), 59 Hun, 418, 13 N. Y. Supp. 390; People ex rel. Collins v. McLaughlin (1908), 128 App. Div. 605; see also Roocwood v. Oakfield, 2 N. Y. St. 335.

§ 989. Forfeiture for exacting payment of money won at gambling.

A person who exacts or receives from another, directly or indirectly, any money or other valuable thing, by reason of the same having been won by playing at cards, faro, or any other game of chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the money or thing so exacted or received, to be recovered in a civil action, by the persons charged with the support of the poor in the place where the offense was committed, for the benefit of the poor.

Derivation: Penal Code, § 340.

§ 990. Penalty for winning or losing twenty-five dollars or upwards.

A person who wins or loses at play or by betting, at any time, the sum or value of twenty-five dollars or upwards, within the space of twenty-four hours, is punishable by a fine not less than five times the value or sum so lost or won, to be recovered in a civil action, by the persons charged with the support of the poor in

the place where the offense was committed, for the benefit of the poor.

Derivation: Penal Code, § 341.

Gideon v. Dwyer (dissenting opinion) (1895), 87 Hun, 255, 33 N. Y. Supp. 754; People ex rel. Collins v. McLaughlin (1908), 128 App. Div. 605; see also Arrieta v. Morrissey, 1 Abb. Pr. (N. S.) 439; Longworthy v. Bromley, 29 How. Pr. 92.

§ **991. Illegal wagers, bets and stakes.**

All wagers, bets or stakes, made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event whatever, shall be unlawful.

Derivation: 1 R. S. 662, § 8, in part. For remainder of section, see § 992, *post*.

§ **992. Contracts on account of money or property wagered bet or staked are void.**

All contracts for or on account of any money or property, or thing in action wagered, bet or staked, as provided in the preceding section, shall be void.

Derivation: 1 R. S. 662, § 8, in part. For remainder of section, see § 991, *ante*.

§ **993. Securities for money lost at gaming void.**

All things in action, judgments, mortgages, conveyances, and every other security whatsoever, given or executed, by any person, where the whole or any part of the consideration of the same shall be for any money or other valuable thing won by playing at any game whatsoever, or won by betting on the hands or sides of such as do play at any game, or where the same shall be made for the repaying any money knowingly lent or advanced for the purpose of such gaming or betting aforesaid, or lent or advanced at the time and place of such play, to any person so gaming or betting aforesaid, or to any person who, during such play, shall play or bet, shall be utterly void, except where such securities, conveyances or mortgages shall affect any real estate, when the same shall be void as to the grantee therein, so far only as hereinafter declared.

When any securities, mortgages or other conveyances, executed for the whole or part of any consideration specified in the pre-

ceding paragraph shall affect any real estate, they shall inure for the sole benefit of such person as would be entitled to the said real estate, if the grantor or person incumbering the same, had died, immediately upon the execution of such instrument, and shall be deemed to be taken and held to and for the use of the person who would be so entitled. All grants, covenants and conveyances, for preventing such real estate from coming to, or devolving upon, the person hereby intended to enjoy the same as aforesaid, or in any way incumbering or charging the same, so as to prevent such person from enjoying the same fully and entirely, shall be deemed fraudulent and void.

Derivation: 1 R. S. 663, §§ 16-17.

§ 994. Property staked may be recovered.

Any person who shall pay, deliver or deposit any money, property or thing in action, upon the event of any wager or bet prohibited, may sue for and recover the same of the winner or person to whom the same shall be paid or delivered, and of the stakeholder or other person in whose hands shall be deposited any such wager, bet or stake, or any part thereof, whether the same shall have been paid over by such stakeholder or not, and whether any such wager be lost or not.

Derivation: 1 R. S. 662, § 9.

§ 995. Losers of certain sums may recover them.

Every person who shall, by playing at any game, or by betting on the sides or hands of such as do play, lose at any time or sitting, the sum or value of twenty-five dollars or upwards, and shall pay or deliver the same or any part thereof, may, within three calendar months after such payment or delivery, sue for and recover the money or value of the things so lost and paid or delivered, from the winner thereof.

In case the person losing such sum or value shall not, within the time aforesaid, in good faith and without collusion, sue for the sum or value so by him lost and paid or delivered, and prosecute such suit to effect without unreasonable delay, the overseers of the poor of the town where the offense was committed, may sue for and recover the sum or value so lost and paid, together with treble the said sum or value, from the winner thereof, for the benefit of the poor.

Derivation: 1 R. S. 662-663, §§ 14-15.

§ **996. Witnesses' privileges.**

1. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

2. Any person offending against any of the provisions contained in section nine hundred and ninety-one of this article, who shall be admitted and examined as a witness, in any court of record, to sustain any suit or prosecution authorized by sections nine hundred and ninety-four and nine hundred and ninety-five, may be discharged by the court from all penalties by reason of such offense, if such person has not before been convicted thereof, or of a similar offense, and if it appear to the court satisfactorily, that such person was duped or enticed into the commission of the offense, by those against whom he shall testify.

Derivation: Subd. 1, Penal Code, § 342, as amended L. 1904, ch. 649. Subd. 2, 1 R. S. 664, § 21.

People ex rel. Lewisohn v. O'Brien (1903), 176 N. Y. 253, aff'g 81 App. Div. 51, rev'g 39 Misc. 460, 80 N. Y. Supp. 816; People ex rel. Lewisohn v. Court of Gen. Sessions (1904), 96 App. Div. 201, 89 N. Y. Supp. 364, aff'd 179 N. Y. 594; Matter of Birdsall (1905), 49 Misc. 56, 96 N. Y. Supp. 462.

§ **997. Officers directed to prosecute offenses.**

It is the duty of all sheriffs, constables, police officers, and prosecuting or district attorneys to inform against, and prosecute, all persons whom they have reason to believe offenders against the provisions of this article; and any omission so to do is punishable by a fine not exceeding five hundred dollars.

Derivation: Penal Code, § 349.

ARTICLE 90.

HABITUAL CRIMINALS.

SECTION 1020. When a person may be adjudged an habitual criminal.
1021. Person of habitual criminal subject to supervision.
1022. Effect of pardon of habitual criminal.

§ 1020. When a person may be adjudged an habitual criminal.

Where a person is hereafter convicted of a felony, who has been, before that conviction, convicted in this state, of any other crime, or where a person is hereafter convicted of a misdemeanor who has been already five times convicted in this state of a misdemeanor, he may be adjudged by the court, in addition to any other punishment inflicted upon him, to be an habitual criminal.

Derivation: Penal Code, § 690.

People ex rel. Sloane v. Fallon (1899), 27 Misc. 19, 57 N. Y. Supp. 931, 13 N. Y. Cr. 429, 553; see also People v. McCarthy, 45 How. Pr. 97.

§ 1021. Person of habitual criminal subject to supervision.

The person of an habitual criminal shall be at all times subject to the supervision of every judicial magistrate of the county, and of the supervisors and overseers of the poor of the town where the criminal may be found, to the same extent that a minor is subject to the control of his parent or guardian.

Derivation: Penal Code, § 691.

§ 1022. Effect of pardon of habitual criminal.

The governor may grant a pardon which shall relieve from judgment of habitual criminality as from any other sentence; but upon a subsequent conviction for felony of a person so pardoned, a judgment of habitual criminality may be again pronounced on account of the first conviction, notwithstanding such pardon.

Derivation: Penal Code, § 692.

People v. Price (1890), 119 N. Y. 650, 53 Hun, 188, 6 N. Y. Supp. 833, 6 N. Y. Cr. 141; Roberts v. State (1899), 160 N. Y. 217, aff'g 30 App. Div. 106, 51 N. Y. Supp. 691.

ARTICLE 92.

HAZING.

SECTION 1030. Hazing prohibited.

§ 1030. Hazing prohibited.

It shall be unlawful for any person to engage in or aid or abet what is commonly called hazing, in or while attending any of the colleges, public schools or other institutions of learning in this state, and whoever participates in the same shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars, or imprisonment not less than thirty days nor more than one year, or both, at the discretion of the court.

Whenever any tattooing or permanent disfigurement of the body, limbs or features of any person may result from such hazing, by the use of nitrate of silver or any like substance, it shall be held to be a crime of the degree of mayhem, and any person guilty of the same shall, upon conviction, be punished by imprisonment for not less than three nor more than fifteen years.

Derivation: L. 1894, ch. 265.

ARTICLE 94.

HOMICIDE.

SECTION 1040. Common law petit treason is homicide.
1041. What proof of death is required.
1042. Homicide defined.
1043. Different kinds of homicide.
1044. Murder in first degree defined.
1045. Punishment for murder in first degree.
1046. Murder in second degree defined.
1047. Duel fought out of this state.
1048. Punishment for murder in the second degree.
1049. Manslaughter defined.
1050. Manslaughter in first degree.
1051. Punishment for manslaughter in first degree.
1052. Manslaughter in second degree defined.
1053. Punishment for manslaughter in second degree.
1054. Excusable homicide.
1055. Justifiable homicide.

§ 1040. Common law petit treason is homicide.

The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished; and those homicides are punishable, when not justifiable or excusable, as prescribed by this chapter.

Derivation: Penal Code, § 182.

§ 1041. What proof of death is required.

No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant, as alleged, are each established as independent facts; the former by direct proof, and the latter beyond a reasonable doubt.

Derivation: Penal Code, § 181, as amended L. 1882, ch. 384.

Ruloff v. People (1858), 18 N. Y. 179, rev'g 3 Park, 401; People v. Schryver (1870), 42 N. Y. 1, 1 Am. Rep. 480, overruling Patterson v. People, 46 Barb. 625; People v. Bennett (1872), 49 N. Y. 137; People v. Palmer (1888), 109 N. Y. 110, rev'g 46 Hun, 479; People v. Deacons (1888), 109 N. Y. 374, 16 N. E. 676, note; People v. Beckwith (1888), 108 N. Y. 68, aff'g 45 Hun, 222, 7 N. Y. Cr. 146; People v. O'Neil (1888), 109 N. Y. 251; People v. Benham (1899), 160 N. Y. 402, 14 N. Y. Cr. 207; People v. Tobin (1903), 176 N. Y. 288; People v. Egnor (1903), 175 N. Y. 430, 17 N. Y. Cr. 398; People v.

Patrick (1905), 182 N. Y. 131; see also People v. Badgley, 16 Wend. 53; People v. Hennessy, 15 Wend. 147; People v. Minisci, 12 N. Y. St. 720; People v. Wilson, 3 Park, 199; Matthews v. State, 55 Ala. 187, 28 Am. Rep. 698; Lee v. State, 76 Ga. 498; State v. German, 54 Mo. 526, 14 Am. Rep. 481; State v. Moran (Oreg.), 14 Pac. 419; Davis Case, 3 C. H. Rec. 45.

§ 1042. Homicide defined.

Homicide is the killing of one human being by the act, procurement or omission of another.

Derivation: Penal Code, § 179.

Fitzgerrold v. People (1868), 37 N. Y. 413, aff'g 49 Barb. 122; Buel v. People (1879), 78 N. Y. 498, aff'g 18 Hun, 487; People v. Giblin (1889), 115 N. Y. 196, 7 N. Y. Cr. 130; People v. Greenwall (1889), 115 N. Y. 523; People v. Downs (1890), 123 N. Y. 558; People v. Young (1906), 96 App. Div. 33, 88 N. Y. Supp. 1063, 18 N. Y. Cr. 443.

§ 1043. Different kinds of homicide.

Homicide is:

1. Murder; or,
2. Manslaughter; or,
3. Excusable homicide; or,
4. Justifiable homicide.

Derivation: Penal Code, § 180.

People v. Young (1904), 96 App. Div. 33, 88 N. Y. Supp. 1063, 18 N. Y. Cr. 443; Matter of Joerns (1906), 51 Misc. 396, 100 N. Y. Supp. 505.

§ 1044. Murder in first degree defined.

The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed:

1. From a deliberate and premeditated design to effect the death of the person killed, or of another; or,

2. By an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual; or without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise; or,

3. When perpetrated in committing the crime of arson in the first degree.

4. A person who wilfully, by loosening, removing or displacing a rail, or by any other interference, wrecks, destroys or so injures

any car, tender, locomotive or railway train, or part thereof, while moving upon any railway in this state, whether operated by steam, electricity or other motive power, as to thereby cause the death of a human being, is guilty of murder in the first degree, and punishable accordingly.

Derivation: Penal Code, § 183, as amended L. 1882, ch. 384, § 1; also, Penal Code, § 183a, added L. 1897, ch. 548, § 1.

Stokes v. People (1873), 53 N. Y. 164; Abbott v. People (1881), 86 N. Y. 460, aff'g 12 W. Dig. 282; Moett v. People (1881), 85 N. Y. 373, aff'g 23 Hun, 60; Greenfield v. People (1881), 85 N. Y. 75, 39 Am. Rep. 636, aff'g 23 Hun, 154; People v. Jackson (1888), 111 N. Y. 362; People v. Giblin (1889), 115 N. Y. 198, 7 N. Y. Cr. 132; People v. Kelly (1889), 113 N. Y. 647, 7 N. Y. Cr. 48; People v. Carlton (1889), 115 N. Y. 618; People v. Smith (1890), 121 N. Y. 579, aff'g 7 N. Y. Supp. 953; People v. Trezza (1890), 125 N. Y. 740; People v. Fish (1890), 125 N. Y. 136; People v. Osmond (1893), 138 N. Y. 80; People v. Webster (1893), 68 Hun, 11, 22 N. Y. Supp. 634; People v. Johnson (1893), 139 N. Y. 358; People v. Feigenbaum (1895), 148 N. Y. 636, 12 N. Y. Cr. 65; People v. Cassata (1896), 6 App. Div. 386, 39 N. Y. Supp. 641; People v. Scott (1897), 153 N. Y. 40, 12 N. Y. Cr. 374; People v. Sutherland (1897), 154 N. Y. 345, 12 N. Y. Cr. 495; People v. Place (1898), 157 N. Y. 584; People v. McDonald (1899), 159 N. Y. 314; People v. Ferraro (1899), 161 N. Y. 365; People v. Kennedy (1899), 159 N. Y. 346; People v. De Garmo (1902), 73 App. Div. 46, 76 N. Y. Supp. 477; People v. Flanigan (1903), 174 N. Y. 366, 17 N. Y. Cr. 312; People v. Sullivan (1903), 173 N. Y. 127; People v. Wheeler (1903), 79 App. Div. 396, 79 N. Y. Supp. 454; Petty v. Emery (1904), 96 App. Div. 33, 88 N. Y. Supp. 1063, 18 N. Y. Cr. 443; People v. Summerfield (1905), 48 Misc. 242, 96 N. Y. Supp. 502, 19 N. Y. Cr. 507; People v. Dinser (1905), 49 Misc. 82, 98 N. Y. Supp. 314; People v. Hunter (1906), 184 N. Y. 237, 20 N. Y. Cr. 37, 38; People v. Dinser (1908), 192 N. Y. 80, aff'g 121 App. Div. 738, 106 N. Y. Supp. 495; see also People v. Lamb, 2 Abb. Pr. (N. S.) 148, 154.

Subd. 1.—People v. Clark (1852), 7 N. Y. 385; People v. Walworth (1873), 4 N. Y. Cr. 360; People v. Majone (1883), 91 N. Y. 211, aff'g 12 Abb. N. C. 187; People v. Cornetti (1883), 92 N. Y. 85; People v. Mangano (1883), 29 Hun, 259, 1 N. Y. Cr. 211; Leighton v. People (1882), 88 N. Y. 117, 10 Abb. N. C. 261; People v. Conroy (1884), 97 N. Y. 62, 2 N. Y. Cr. 565; People v. Beckwith (1886), 103 N. Y. 360, 108 N. Y. 67; People v. Druse (1886), 5 N. Y. Cr. 11; People v. Kiernan (1886), 4 N. Y. Cr. 88, 101 N. Y. 618; People v. Van Brunt (1888), 108 N. Y. 656; People v. Hawkins (1888), 109 N. Y. 408; People v. Deacons (1888), 109 N. Y. 373; People v. Lewis (1889), 7 N. Y. Cr. 140; People v. Wilson (1894), 141 N. Y. 185; People v. Barberi (1896), 149 N. Y. 256; People v. Conroy (1897), 153 N. Y. 174; People v. Constantino (1897), 153 N. Y. 24; People v. Hughson (1897), 154 N. Y. 153; People v. Decker (1898), 157 N. Y. 186; People v. Pullerson (1899), 159 N. Y. 339; People v. Meyer (1900), 162 N. Y. 357; People v. Schmidt (1901), 168 N. Y. 568; People v. Pugh (1901), 167 N. Y. 524; People v. Filipelli (1902), 173 N. Y. 509; People v. Koenig (1904), 180 N. Y. 155;

People v. Rimieri (1904), 180 N. Y. 163; People v. Raffo (1904), 180 N. Y. 434; People v. Breen (1905), 181 N. Y. 493; People v. Silverman (1905), 181 N. Y. 235; People v. Nelson (1907), 189 N. Y. 137; People v. Bonier (1907), 189 N. Y. 108; People v. Wenzel (1907), 189 N. Y. 275; People v. Gillette (1908), 191 N. Y. 107; People v. Strollo (1908), 191 N. Y. 42; see also People v. Devine, 1 Edm. Sel. Cas. 594; People v. Sullivan, 2 Edm. Sel. Cas. 277; People v. Clark, 2 Edm. Sel. Cas. 273.

Subd. 2.—People v. Gallo (1896), 149 N. Y. 106; see also People v. Hayes, 1 Edm. Sel. Cas. 582; People v. Doyle, 2 Edm. Sel. Cas. 258.

Subd. 3.—Fitzgerrold v. People (1868), 37 N. Y. 413, aff'g 49 Barb. 122; Ruloff v. People (1871), 45 N. Y. 213, aff'g 5 Lans. 261; Buel v. People (1879), 78 N. Y. 492, aff'g 18 Hun, 487; Cox v. People (1880), 80 N. Y. 502, aff'g 19 Hun, 430; People v. Cole (1883), 2 N. Y. Cr. 109; People v. Sweeney (1886), 4 N. Y. Cr. 283, 284, 41 Hun, 340; People v. Willett (1886), 102 N. Y. 251; People v. Johnson (1888), 110 N. Y. 134; People v. Greenwall (1889), 115 N. Y. 523, 7 N. Y. Cr. 299; People v. Giblin (1889), 115 N. Y. 196, 7 N. Y. Cr. 130; People v. Pallister (1893), 138 N. Y. 601; People v. Miles (1894), 143 N. Y. 383; People v. Meyer (1900), 162 N. Y. 357; People v. Wise (1900), 163 N. Y. 440; People v. Sullivan (1902), 173 N. Y. 122, 17 N. Y. Cr. 180; People v. Young (1903), 40 Misc. 256, 81 N. Y. Supp. 967; People v. Flanigan (1903), 174 N. Y. 357; People v. Dankberg (1904), 91 App. Div. 67, 86 N. Y. Supp. 423; People v. Huter (1906), 184 N. Y. 237.

Subd. 4.—People v. Greenwall, 115 N. Y. 524, 7 N. Y. Cr. 310.

§ 1045. Punishment for murder in first degree.

Murder in the first degree is punishable by death.

Derivation: Penal Code, § 186.

§ 1046. Murder in second degree defined.

Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation.

Derivation: Penal Code, § 184.

People v. Walworth (1873), 4 N. Y. Cr. 355; McKenna v. People (1880), 81 N. Y. 360, rev'g 18 Hun, 580; People v. Donovan (1885), 3 N. Y. Cr. 79; People v. Hill (1888), 49 Hun, 434, 3 N. Y. Supp. 564; People v. Hoch (1896), 150 N. Y. 293; People v. Martin (1898), 33 App. Div. 282, 53 N. Y. Supp. 745; People v. Sullivan (1903), 173 N. Y. 122, 130; People v. Young (1904), 96 App. Div. 33, 88 N. Y. Supp. 1063; Petty v. Emery (1904), 96 App. Div. 35, 88 N. Y. Supp. 1063, 18 N. Y. Cr. 443; People v. Dinser (1908), 192 N. Y. 80, aff'g 121 App. Div. 738, 106 N. Y. Supp. 495; see also People v. Sheriff of Westchester, 1 Park, 659; People v. Skeehan, 49 Barb. 217.

§ 1047. Duel fought out of this state.

A person who, by previous appointment made within the state,

fights a duel without the state, and in so doing inflicts a wound upon his antagonist, whereof the person injured dies; or who engages or participates in such a duel, as a second or assistant to either party, is guilty of murder in the second degree, and may be indicted, tried and convicted in any county of this state.

Derivation: Penal Code, § 185.

People v. Rochester Ry. & Light Co. (1908), 59 Misc. 351, 112 N. Y. Supp. 362.

§ 1048. Punishment for murder in the second degree.

Murder in the second degree is punishable by imprisonment under an indeterminate sentence, the minimum of which shall be twenty years and the maximum of which shall be for the offender's natural life; and any person serving a term of imprisonment for life, under an original sentence for murder in the second degree, on the first day of September, nineteen hundred and seven, shall be deemed to be thereafter serving under such an indeterminate sentence.

Derivation: Penal Code, § 187, as amended L. 1907, ch. 738.

§ 1049. Manslaughter defined.

In a case other than one of those specified in sections ten hundred and forty-four, ten hundred and forty-six and ten hundred and forty-seven, homicide, not being justifiable or excusable, is manslaughter.

Derivation: Penal Code, § 188.

People v. Sullivan (1852), 7 N. Y. 396; Evans v. People (1872), 49 N. Y. 86; People v. Cole (1883), 2 N. Y. Cr. 108; People v. Beckwith (1886), 103 N. Y. 360, 5 N. Y. Cr. 228; People v. McCarthy (1888), 110 N. Y. 310, aff'g 47 Hun, 491; People v. Hill (1888), 49 Hun, 432, 3 N. Y. Supp. 564; see also People v. Austin, 1 Park. 291; Beale's Case, 6 City Hall Rec. 59; People v. Butler, 3 Park, 377; People v. Cole, 4 Park, 35; People v. Devine, 1 Edm. Sel. Cas. 594; People v. Fitzsimmons, 34 N. Y. Supp. 1102; People v. Fuller, 2 Park, 16; Goodwin's Case, 5 City Hall Rec. 52; Goodwin's Case, 6 City Hall Rec. 9; People v. Hammill, 2 Park, 223; McCann v. People, 6 Park, 629; Patterson's Case, 3 City Hall Rec. 145; People v. Ryan, 2 Wheel. Cr. Cas. 47; People v. Tannan, 4 Park, 514; People v. Waltz, 50 How. Pr. 204; Wilson v. People, 4 Park, 619.

§ 1050. Manslaughter in first degree.

Such homicide is manslaughter in the first degree, when committed without a design to effect death:

1. By a person engaged in committing, or attempting to com-

mit, a misdemeanor, affecting the person or property, either of the person killed, or of another; or,

2. In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

The wilful killing of an unborn quick child, by any injury committed upon the person of the mother of such child, is manslaughter in the first degree.

A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug, or substance, or who uses or employs, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman, or of any quick child of which she is pregnant, is thereby produced, is guilty of manslaughter in the first degree.

Derivation: Penal Code, §§ 189-191.

Lohman v. People (1848), 1 N. Y. 379, 2 Barb. 216; People v. Sullivan (1852), 7 N. Y. 396; Darry v. People (1854), 10 N. Y. 120, 2 Park, 608; Evans v. People (1872), 49 N. Y. 86; Buel v. People (1879), 78 N. Y. 492, 500, aff'g 18 Hun, 487; People v. Rego (1885), 36 Hun, 129, 3 N. Y. Cr. 276; People v. Carlton (1889), 115 N. Y. 618; People v. Webster (1893), 68 Hun, 11, 22 N. Y. Supp. 634; People v. Maine (1900), 51 App. Div. 142, 64 N. Y. Supp. 579, rev'd 166 N. Y. 50; People v. Van De Garmo (1902), 73 App. Div. 46, 16 N. Y. Cr. 539, 76 N. Y. Supp. 447; People v. Sullivan (1903), 123 N. Y. 122, 130; People v. Flanigan (1903), 174 N. Y. 368, 17 N. Y. Cr. 312; Petty v. Emery (1904), 96 App. Div. 35, 88 N. Y. Supp. 823; People v. Stacy (1905), 119 App. Div. 743, 104 N. Y. Supp. 615, 21 N. Y. Cr. 215; People v. Huson (1906), 187 N. Y. 97, rev'g 114 App. Div. 693, 99 N. Y. Supp. 1081, 20 N. Y. Cr. 338; People v. Mallon (1907), 189 N. Y. 520, aff'g 116 App. Div. 425, 101 N. Y. Supp. 814; People v. Granger (1907), 187 N. Y. 67; People v. Van Gaasbeck (1907), 118 App. Div. 511, 103 N. Y. Supp. 249; People v. Weick (1908), 123 App. Div. 328, 107 N. Y. Supp. 968; see also People v. Butler, 3 Park, 377; People v. Cole, 4 Park, 35; Foster v. People, 50 Park, 598; People v. Hammill, 2 Park, 223; People v. Johnson, 2 Park, 291; McCann v. People, 6 Park, 629; People v. McGonegal, 17 N. Y. Supp. 148; Patterson's Case, 3 City Hall Rec. 145; People v. Rector, 19 Wend. 569; People v. Sheriff, etc., 1 Park, 659; People v. Stockham, 1 Park, 424.

§ 1051. Punishment for manslaughter in first degree.

Manslaughter in the first degree is punishable by imprisonment for a term not exceeding twenty years.

Derivation: Penal Code, § 192, as amended L. 1892, ch. 662, § 3. People v. Hudson (1907), 187 N. Y. 100.

§ 1052. Manslaughter in second degree defined.

Such homicide is manslaughter in the second degree, when committed without a design to effect death:

1. By a person committing or attempting to commit a trespass, or other invasion of a private right, either of the person killed, or of another, not amounting to a crime; or,

2. In the heat of passion, but not by a dangerous weapon or by the use of means either cruel or unusual; or,

3. By any act, procurement or culpable negligence of any person, which, according to the provisions of this article, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree.

Woman producing miscarriage.—A woman quick with child, who takes or uses, or submits to the use of any drug, medicine, or substance, or any instrument or other means with intent to produce her own miscarriage, unless the same is necessary to preserve her own life, or that of the child whereof she is pregnant, if the death of such child is thereby produced is guilty of manslaughter in the second degree.

Negligent use of machinery.—A person who, by any act of negligence or misconduct in a business or employment in which he is engaged, or in the use or management of any machinery, animals, or property of any kind, intrusted to his care, or under his control, or by any unlawful, negligent or reckless act, not specified by or coming within the foregoing provisions of this article, or the provisions of some other statute, occasions the death of a human being, is guilty of manslaughter in the second degree.

Mischievous animals.—If the owner of a mischievous animal, knowing its propensities, wilfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, and not confined, kills a human being, who has taken all the precautions which the circumstances permitted, to avoid the animal, the owner is guilty of manslaughter in the second degree.

Overloading passenger vessel.—A person navigating a vessel for gain, who wilfully or negligently receives so many passengers or such a quantity of other lading on board the vessel, that, by means thereof, the vessel sinks, or is overset or injured, and thereby a human being is drowned, or otherwise killed, is guilty of manslaughter in the second degree.

Persons in charge of steamboats.—A person having charge of a steamboat used for the conveyance of passengers, or of a boiler

or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

Persons in charge of steam engines.—An engineer or other person, having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in a manufactory, or in any mechanical works, who wilfully, or from ignorance or gross neglect, creates or allows to be created, such an undue quantity of steam as to burst the boiler, engine or apparatus, or to cause any other accident, whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

Acts of physicians while intoxicated.—A physician or surgeon, or person practicing as such, who, being in a state of intoxication, without a design to effect death, administers a poisonous drug or medicine, or does any other act as a physician or surgeon, to another person, which produces the death of the latter, is guilty of manslaughter in the second degree.

Persons making or keeping gunpowder contrary to law.—A person who makes or keeps gunpowder or any other explosive substance within a city or village, in any quantity or manner prohibited by law, or by ordinance of the city or village, if any explosion thereof occurs, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

Derivation: Penal Code, § 193, subd. 2, as amended L. 1887, ch. 23, § 1; also, Penal Code, § 194-201.

People v. Melius (1882), 1 N. Y. Cr. 39; People v. Rego (1885), 36 Hun, 129, 3 N. Y. Cr. 275; People v. Buddensieck (1886), 103 N. Y. 490, 5 N. Y. Cr. 69; People v. McCarthy (1888), 47 Hun, 491; People v. Welch (1894), 141 N. Y. 266, 24 L. R. A. 117, aff'g 74 Hun, 474, 26 N. Y. Supp. 694; People v. Maine (1901), 166 N. Y. 50, rev'g 51 App. Div. 142, 64 N. Y. Supp. 579; People v. Wheeler (1903), 79 App. Div. 396, 79 N. Y. Supp. 454; Petty v. Emery (1904), 96 App. Div. 35, 88 N. Y. Supp. 823; People v. Young (1904), 96 App. Div. 33, 88 N. Y. Supp. 823; People v. Taylor (1904), 92 App. Div. 29, 86 N. Y. Supp. 996; People v. Quimby (1906), 113 App. Div. 793, 99 N. Y. Supp. 330.

§ 1053. Punishment for manslaughter in second degree.

Manslaughter in the second degree is punishable by imprisonment for a term not exceeding fifteen years, or by a fine of not more than one thousand dollars, or by both.

Derivation: Penal Code, § 202, as amended L. 1892, ch. 662.

§ 1054. Excusable homicide.

Homicide is excusable when committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with ordinary caution, and without any unlawful intent.

Derivation: Penal Code, § 203.

People v. Carlton (1889), 115 N. Y. 618; People v. O'Connor (1903), 82 App. Div. 55, 81 N. Y. Supp. 555; People v. Dankberg (1904), 91 App. Div. 67, 86 N. Y. Supp. 423.

§ 1055. Justifiable homicide.

Homicide is justifiable when committed by a public officer, or a person acting by his command and in his aid and assistance:

1. In obedience to the judgment of a competent court; or,

2. Necessarily, in overcoming actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty; or,

3. Necessarily, in retaking a prisoner who has committed, or has been arrested for, or convicted of a felony, and who has escaped or has been rescued, or in arresting a person who has committed a felony and is fleeing from justice; or in attempting by lawful ways and means to apprehend a person for a felony actually committed, or in lawfully suppressing a riot, or in lawfully preserving the peace.

Homicide is also justifiable when committed:

1. In the lawful defense of the slayer, or of his or her husband, wife, parent, child, brother, sister, master or servant, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer, or to any such person, and there is imminent danger of such design being accomplished; or,

2. In the actual resistence of an attempt to commit a felony

upon the slayer, in his presence, or upon or in a dwelling or other place of abode in which he is.

Derivation: Penal Code, §§ 204-205.

People v. Sullivan (1852), 7 N. Y. 396; People v. Walworth (1873), 4 N. Y. Cr. 355; People v. Carlton (1889), 115 N. Y. 618; People v. Downs (1890), 123 N. Y. 558; People v. Hess (1896), 8 App. Div. 143, 40 N. Y. Supp. 486; People v. Cantor (1902), 71 App. Div. 185, 16 N. Y. Cr. 375, 75 N. Y. Supp. 688; People v. O'Connor (1903), 82 App. Div. 55, 81 N. Y. Supp. 555; People v. Rodawald (1904), 177 N. Y. 423, 18 N. Y. Cr. 164; People v. Weaver (1904), 177 N. Y. 434, 18 N. Y. Cr. 189; People v. Dankberg (1904), 91 App. Div. 67, 86 N. Y. Supp. 423; People v. Regan (1905), 107 App. Div. 608, 94 N. Y. Supp. 841; Magar v. Hammond (1906), 183 N. Y. 390; People v. Governale (1908), 193 N. Y. 587; People v. Jeina (1908), 125 App. Div. 700, 110 N. Y. Supp. 83; People v. Fiori (1908), 123 App. Div. 174, 108 N. Y. Supp. 416.

ARTICLE 96.

HORSE RACING.

SECTION 1080. Racing near a court-house.
1082. Fraudulent entries and practices in contests of speed.
1082. Fraudulent entries and practices in contests of speed.

§ 1080. Racing near a court-house.

A person concerned in any racing, running or other trial of speed between horses or other animals, within one mile of the place where a court is actually sitting, is guilty of a misdemeanor; and it shall not be lawful for any person, association, corporation or copartnership to build, maintain or operate any race track within four miles of any court-house situated in a county adjoining a city of the first class which by the last state enumeration contained not more than seventy-two thousand inhabitants and not less than sixty-eight thousand inhabitants; but nothing in this section shall apply to or affect trials of speed between horses or other animals upon the grounds of a county agricultural society during the days on which the fairs of such society are held, nor apply to or affect the maintenance and operation of any race track upon which races were conducted in the year nineteen hundred and five under the license of the state racing commission.

Derivation: Penal Code, § 147, as amended L. 1900, ch. 109; L. 1906, ch. 353.

§ 1081. Fraudulent entires and practices in contests of speed.

Any person who:

1. Knowingly enters for competition, or furnishes to another person for entry or competition, or brings into this state for entry or competition for any purse, prize, premium, stake or sweepstakes offered or established by any person, association or corporation, any running, trotting or pacing horse, mare, gelding, colt or filly under an assumed name, or out of its proper class, or that has been painted or disguised or represented to be any other or different horse, mare, gelding, colt or filly from the one which is purported to be entered where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed; or,

2. Being the owner, trainer, or other person having the control

of the racing qualities of any running, trotting or pacing horse, mare, gelding, colt or filly, knowingly allows the same to compete for any such prize, purse, premium, stake or sweepstakes under an assumed name, or out of its proper class, or as any other or different horse, mare, gelding, colt or filly than the one it actually is; or,

3. In any competition for any such purse, prize, premium, stake or sweepstakes, knowingly drives any trotting or pacing horse, mare, gelding, colt or filly which has been entered under an assumed name, or out of its proper class or which has been painted or disguised, or represented to be any other or different horse, mare, gelding, colt or filly than the one it actually is,

Shall be guilty of a misdemeanor, punishable by a fine of not less than five hundred nor more than fifteen hundred dollars, or by imprisonment for not more than one year, or both.

The true name and age, and also the pedigree, unless such pedigree is unknown, of every such animal shall be registered with the jockey club before it shall be eligible to compete in any such race conducted under the license of the state racing commission; and such name shall continue to be its true name unless and until the same shall be changed according to the rules and regulations of such jockey club. Any person who shall knowingly cause or procure or aid in any false registration under this section shall be guilty of a misdemeanor, and upon conviction shall be punished as hereinabove provided. The class to which any such animal belongs for the purpose of the entry or competition in any other race shall be determined by the public performance thereof in former contests or trials of speed, as provided by the printed rules of the person, association or corporation under which the proposed contest is advertised to be conducted.

Derivation: Penal Code, § 384-o, added L. 1898, ch. 394, § 1; amended L. 1906, ch. 454.

§ **1082. Fraudulent entries and practices in contests of speed.**

1. It is hereby made unlawful for any person or persons knowingly to enter or cause to be entered for competition or to compete for any purse, prize, premium, stake or sweepstakes offered or given by any agricultural or other society, association, or person or persons in the state of New York or to drive any horse, mare or gelding, colt or filly under an assumed name, or out of its proper

class, where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed.

2. Any person or persons found guilty of a violation of subdivision one of this section shall upon conviction thereof be imprisoned in the state prison for a period of not more than three years, or by imprisonment in the county jail of the county in which he is convicted for a definite period of not more than one year or shall be fined in a sum not exceeding one thousand dollars, and one-half of such fine shall be paid to the society or association upon whose grounds such offense shall be committed.

3. The name of any horse for the purpose of entry for competition in any contest of speed shall not be changed after once having contested for a prize, purse, premium, stake or sweepstake, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted.

4. The class to which a horse belongs for the purpose of an entry in any such contest of speed shall be determined by the public performance of said horse in any former contest or trial of speed, as provided by the printed rules of the society or association under which the proposed contest is advertised to be conducted, and any person or persons knowingly misrepresenting or fraudulently concealing the result of the public performance in any former contest of speed of any horse which he or they propose to enter for competition in any such contest, shall, upon conviction thereof, be liable to the same punishment as is provided in subdivision two of this section, whether he or they shall succeed in making such entry or not.

Derivation: L. 1893, ch. 296.

ARTICLE 98.

HUSBAND AND WIFE.

SECTION 1090. Compulsory prostitution of wife.
1091. Wife a competent witness.
1092. Presence of husband no defense.

§ 1090. Compulsory prostitution of wife.

Any man who by force, fraud, intimidation or threats, places or leaves, or procures any other person to place or leave, his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony and upon conviction thereof shall be imprisoned for not more than ten years.

Derivation: Penal Code, § 282b, in part, as added L. 1906, ch. 138, § 1. For remainder of section, see § 1091, *post*.

§ 1091. Wife a competent witness.

In all prosecutions under the previous section, the wife shall be a competent witness against the husband, but no conviction under this article shall be had upon the testimony of the wife unsupported by other evidence.

Derivation: Penal Code, § 282b, in part, as added L. 1906, ch. 138, § 1. For remainder of section, see § 1090, *ante*.

§ 1092. Presence of husband no defense.

It is not a defense, to a married woman charged with crime, that the alleged criminal act was committed by her in the presence of her husband.

Derivation: Penal Code, § 24. Originally Penal Law, § 1460; renumbered § 1092 by L. 1909, ch. 524. In effect May 27, 1909.

Seiler v. People (1879), 77 N. Y. 411; Goldstein v. People (1880), 82 N. Y. 231; People v. Ryland (1884), 97 N. Y. 126, 28 Hun, 568; see also Boyd's Case, 3 C. H. Rec. 134; Brandon's Case, 4 C. H. Rec. 140; Brown's Case, 3 C. H. Rec. 56; Goodman's Case, 6 C. H. Rec. 21; Quinlan v. People, 6 Park, 9; Rooney's Case, 3 C. H. Rec. 126; People v. Townsend, 3 Hill, 479.

ARTICLE 100.

ICE.

SECTION 1100. Cutting ice in front of premises of another.

§ 1100. Cutting ice in front of premises of another.

1. A person who takes possession of or cuts ice in front of the lands of another on any water except lakes, ponds, the Hudson and Mohawk rivers and the tide waters of Rondout and Catskill creeks, between the center of such body of water and such lands, after the owner or occupant has posted in a conspicuous manner upon such lands near the banks of such waters a written or printed notice of his desire to cut ice in front of such lands; or,

2. Trespasses upon or takes such ice or any part thereof for commercial purposes; or,

3. Willfully removes any such notice,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 640c, added L. 1893, ch. 692, § 2.

ARTICLE 102.

INCEST.

SECTION 1110. Incest.

§ 1110. Incest.

When persons, within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, intermarry or commit adultery or fornication with each other, each of them is punishable by imprisonment for not more than ten years.

Derivation: Penal Code, § 302.

People v. Vedder (1885), 98 N. Y. 630; People v. Powell (1886), 4 N. Y. Cr. 585; People v. Lake (1888), 110 N. Y. 61, 6 Am. St. Rep. 344; Weisberg v. Weisberg (1906), 112 App. Div. 231, 98 N. Y. Supp. 260; People v. Block (1907), 120 App. Div. 364; see also People v. Harriden, 1 Park, 344; People v. Murray, 14 Cal. 159; Cook v. State, 11 Ga. 53; State v. Markins, 95 Ind. 464, 48 Am. Rep. 733, citing 2 Greenl. Ev., sec. 47; Whart. Crim. Ev., sec. 35; State v. Thomas, 53 Iowa, 214; Chancellor v. State, 47 Miss. 278; State v. Ellis, 74 Mo. 385, 41 Am. Rep. 321; Howard v. State, 11 Ohio, 328; Noble v. State, 22 Ohio St. 541; State v. Brown, 47 Ohio St. 102, 21 Am. St. Rep. 790; Freeman v. State, 11 Tex. Ct. App. 92, 40 Am. Rep. 787; Johnson v. State, 20 Tex. App. 609, 54 Am. Rep. 535; Compton v. State, 13 Tex. Ct. App. 271, 44 Am. Rep. 703; State v. Wegman, 59 Vt. 527, 59 Am. Rep. 753; Com. v. Goodhue, 2 Metc. 193; U. S. v. Hiler, 1 Morris, 330.

ARTICLE 104.

INCOMPETENT PERSONS.

SECTION 1120. Irresponsibility of idiot or lunatic.
1121. Unlawful confinement of idiots, lunatics and insane persons.
1122. Maintaining private insane asylums.

§ 1120. Irresponsibilty of idiot or lunatic.

An act done by a person who is an idiot, imbecile, lunatic or insane is not a crime. A person can not be tried, sentenced to any punishment or punished for a crime while he is in a state of idiocy, imbecility, lunacy or insanity so as to be incapable of understanding the proceeding or making his defense.

A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as:

1. Not to know the nature and quality of the act he was doing; or,

2. Not to know that the act was wrong.

Derivation: Penal Code, §§ 20, 21, as amended L. 1882, ch. 384, § 1.

Dewitt v. Bailey (1858), 17 N. Y. 348; Walter v. People (1865), 32 N. Y. 147, aff'd 6 Park, 15, 18 Abb. 147; Willis v. People (1865), 32 N. Y. 715, 5 Park. 621; Clapp v. Fullerton (1866), 34 N. Y. 190; O'Brien v. People (1867), 48 Barb, 274, aff'g 36 N. Y. 276; People v. Schruyver (1870), 42 N. Y. 1; Real v. People (1870), 42 N. Y. 270, 8 Abb. Pr. (N. S.) 314, 55 Barb. 551; People v. Walworth (1873), 4 N. Y. Cr. 355; Brotherton v. People (1878), 75 N. Y. 159, aff'g 14 Hun, 486; People v. Moett (1880), 23 Hun, 60; People v. Coleman (1881), 1 N. Y. Cr. 1; O'Connell v. People (1882), 87 N. Y. 377, 62 How. 436, 41 Am. Rep. 379; Sindram v. People (1882), 88 N. Y. 196, aff'g 1 N. Y. Cr. 448; Walsh v. People (1882), 88 N. Y. 458; Walker v. People (1882), 88 N. Y. 86, 1 N. Y. Cr. 27, aff'g 26 Hun, 67; Casey v. People (1883), 31 Hun, 158, 2 N. Y. Cr. 187; Flanagan v. People (1883), 52 N. Y. 467; People v. Mills (1885), 98 N. Y. 176; People v. Murphy (1885), 101 N. Y. 126; People v. Carpenter (1886), 102 N. Y. 250, 4 N. Y. Cr. 187, aff'g 38 Hun, 490; People v. Hawkins (1888), 109 N. Y. 408; People v. Barber (1889), 115 N. Y. 475; People v. Packenham (1889), 115 N. Y. 200; People v. McElvaine (1890), 125 N. Y. 600, aff'd 142 U. S. 55; People v. McElvaine (1890), 121 N. Y. 256; Kemmler's Case (1890), 119 N. Y. 580; People v. Foy (1893), 138 N. Y. 664; People v. Taylor (1893), 138 N. Y. 398; People v. Strait (1895), 148 N. Y. 566, 12 N. Y. Cr. 145; People v. Barberi (1896), 149 N. Y. 256, 12 N. Y. Cr. 210; People v. Youngs (1896),

151 N. Y. 210; People v. Nino (1896), 149 N. Y. 318, 12 N. Y. Cr. 228; People v. Kerns (1896), 7 App. Div. 535, 40 N. Y. Supp. 243; People v. Hoch (1896), 150 N. Y. 292, 11 N. Y. Cr. 488; People v. Burgess (1897), 153 N. Y. 569, 12 N. Y. Cr. 450; People v. Koerner (1897), 154 N. Y. 355; People v. Ferraro (1899), 151 N. Y. 377, 14 N. Y. Cr. 266; People v. Krist (1901), 168 N. Y. 19, 15 N. Y. Cr. 542; People v. Egnor (1903), 175 N. Y. 429, 17 N. Y. Cr. 398; People v. Silverman (1905), 181 N. Y. 236, 19 N. Y. Cr. 360; People v. Pekartz (1906), 185 N. Y. 470, 20 N. Y. Cr. 169; People v. Furlong (1907), 187 N. Y. 198, 20 N. Y. Cr. 497; People v. Koener (1907), 117 App. Div. 49, 102 N. Y. Supp. 93, 20 N. Y. Cr. 526, aff'd 191 N. Y. 528; see also People v. Beno Ville, 3 Abb. N. C. 195; People v. Carnell, 2 Edm. Sel. Cas. 200; Clark's Case, 1 C. H. Rec. 176; Cole's Case, 7 Abb. Pr. (N. S.) 321; People v. Devine, 1 Edm. Sel. Cas. 594; Jenisch's Case, 3 Abb. N. C. 200; People v. Kleine, 1 Edm. Sel. Cas. 13; McFarland Trial, 8 Abb. Pr. (N. S.) 57; People v. Montgomery, 13 Abb. Pr. (N. S.) 207; Patterson v. People, 46 Barb. 625; Pierrovis' Case, 3 C. H. Rec. 123; People v. Pine, 2 Barb. 566; Sanchez v. People, 4 Park, 535, 18 How. 72, 22 N. Y. 147; Krom v. Shoonmaker, 3 Barb. 467; People v. Sprague, 2 Park, 43; Stauderman's Case, 3 Abb. N. C. 187; Wagner v. People, 2 Keyes, 684, 4 Abb. Dec. 509; People v. Waltz, 50 How. Pr. 204, 3 Abb. N. C. 209; Parsons v. State, 81 Ala. 577, 60 Am. Rep. 193, 36 Alb. L. J. 249; Boswell v. State, 63 Ala. 307, 35 Am. Rep. 20, 2 Crim. L. Mag. 32; People v. Kerrigan, 73 Cal. 222; People v. Hoin, 62 Cal. 120, 45 Am. Rep. 651; Kearney v. People, 11 Col. 258; State v. Hoyt, 46 Conn. 330; Charci v. State, 31 Ga. 424; Dacey v. People, 116 Ill. 555; Wartina v. State, 105 Ind. 445; Conway v. State, 118 Ind. 482, 11 Crim. L. Mag. 640; State v. Mowry, 37 Kan. 369; State v. Lawrence, 57 Me. 574; Cunningham v. State, 56 Miss. 269, 31 Am. Rep. 360; Anderson v. State, 25 Nebr. 550; State v. Jones, 50 N. H. 369; Peacock v. State, 50 N. J. L. 34; State v. Potts, 100 N. C. 457; State v. Murray, 11 Oreg. 413; State v. Bundy, 24 S. C. 439, 58 Am. Rep. 262; Erwin v. State, 10 Tex. App. 700; Willis v. Com. (Va.), 22 Alb. L. J. 176; Guiteau's Case, 10 Fed. 161, 4 Crim. L. Mag. 586; Guiteau's Case, 3 Crim. L. Mag. 358; United States v. Faulkner, 35 Fed. 730; United States v. Young, 7 Crim. L. Mag. 732; State v. Lewis, 12 Crim. L. Mag. 72, 85; Reg. v. Davis, 14 Cox Cr. Cas. 563, 28 Eng. Rep. 657; Bolling v. State, 16 S. W. 658.

§ 1121. Unlawful confinement of idiots, lunatics and insane persons.

A person, who confines an idiot, lunatic or insane person, in any other manner or in any other place than as authorized by law, and a person guilty of harsh, cruel or unkind treatment of, or any neglect of duty towards, any idiot, lunatic or insane person under confinement, whether lawfully or unlawfully confined, is guilty of a misdemeanor.

Derivation: Penal Code, § 377.

§ **1122. Maintaining private insane asylums.**

A person who conducts or maintains a private insane asylum, or institution for the care or treatment of persons of unsound mind, without a license issued and granted to such person according to law, is guity of a misdemeanor.

Derivation: Penal Code, § 445.

ARTICLE 106.

INDECENCY.

SECTION 1140. Exposure of person.
1140-a. Immoral plays and exhibitions and the use and leasing of real property therefor.
1141. Obscene prints and articles.
1141-a. Indecent prints and pictures in public places.
1142. Indecent articles.
1143. Mailing or carrying obscene prints and articles.
1144. Warrant to sheriff to search.
1145. Physicians' instruments.
1146. Keeping disorderly houses.
1147. Who may arrest persons violating provisions of this article.

§ 1140. Exposure of person.

A person who willfully and lewdly exposes his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another so to expose himself, is guilty of a misdemeanor.

Derivation: Penal Code, § 316.

People ex rel. Lee v. Bixby (1875), 4 Hun, 636, 67 Barb. 221; People ex rel. Ryan v. Webster (1895), 86 Hun, 69, 33 N. Y. Supp. 337; People ex rel. Campbell v. Comrs. (1897), 13 App. Div. 69, 43 N. Y. Supp. 118; see also Miller v. People, 5 Barb. 203; Com. v. Wardell, 128 Mass. 52, 35 Am. Rep. 357; Van Houten v. State, 46 N. J. L. 16, 50 Am. Rep. 397; R. v. Holmes, 1 Dears. C. C. 207; R. v. Thallman, L. & C. 326, 9 Cox Cr. Cas. 388; Reg. v. Willard, 15 Cox C. Cas. 559, 36 Eng. Rep. 610.

§ 1140-a. [Added, 1909.] Immoral plays and exhibitions and the use and leasing of real property therefor.

Any person who as owner, manager, director or agent or in any other capacity prepares, advertises, gives, presents or participates in, any obscene, indecent, immoral or impure drama, play, exhibition, show or entertainment, which would tend to the corruption of the morals of youth or others, and every person aiding or abetting such act, and every owner or lessee or manager of any garden, building, room, place or structure, who leases or lets the same or permits the same to be used for the purposes of any such drama, play, exhibition, show or entertainment, knowingly, or who assents to the use of the same for any such purpose, shall be guilty of a misdemeanor.

Added by L. 1909, ch. 279. In effect Sept. 1, 1909.

§ 1141. Obscene prints and articles.

1. A person who sells, lends, gives away or shows, or offers to sell, lend, give away, or show, or has in his possession with intent to sell, lend or give away, or to show, or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper, story paper, writing paper, picture, drawing, photograph, figure or image, or any written or printed matter of an indecent character; or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, or who designs, copies, draws, photographs, prints, utters, publishes, or in any manner manufactures, or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, story paper, writing, paper, figure, image, matter, article or thing, or who writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting so to do, where, how, of whom, or by what means any, or what purports to be any, obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing, named in this section can be purchased, obtained or had or who has in his possession, any slot machine or other mechanical contrivance with moving pictures of nude or partly denuded female figures which pictures are lewd, obscene, indecent or immoral, or other lewd, obscene, indecent or immoral drawing, image, article or object, or who shows, advertises or exhibits the same, or causes the same to be shown, advertised, or exhibited, or who buys, owns or holds any such machine with the intent to show, advertise or in any manner exhibit the same; or who,

2. Prints, utters, publishes, sells, lends, gives away or shows, or has in his possession with intent to sell, lend, give away or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; or who,

3. In any manner, hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, or any of them,

Is guilty of a misdemeanor, and, upon conviction, shall be

sentenced to not less than ten days nor more than one year imprisonment or be fined not less than fifty dollars nor more than one thousand dollars or both fine and imprisonment for each offense.

Derivation: Penal Code, § 317, as amended L. 1884, ch. 380, § 1; L. 1887, ch. 692, § 1; subd. 1, as amended L. 1900, ch. 731.

People v. Muller (1884), 96 N. Y. 408, 2 N. Y. Cr. 375, aff'g 32 Hun, 209; People v. Kaufman (1897), 14 App. Div. 305, 43 N. Y. Supp. 1046; People v. Eastman (1907), 188 N. Y. 478, aff'g 116 App. Div. 922, 101 N. Y. Supp. 1137; People v. Schermerhorn (1908), 59 Misc. 149, 112 N. Y. Supp. 222; see also In re Worthington Co., 30 N. Y. Supp. 361, 24 L. R. A. 110, commented on, 28 Am. L. Rev. 932; Willis v. Warren, 1 Hilt. 590; McNair v. People, 98 Ill. 441; Com. v. Holmes, 17 Mass. 336; People v. Ketchum, 103 Mich. 443, 27 L. R. A. 448; State v. Brown, 27 Vt. 619; State v. Millard, 18 Vt. 574; Rosen v. United States, 161 U. S. 29; Com. v. Landis, 8 Phila. 453; United States v. Bennett, 16 Blatch. 338; Queen v. Hicklin, L. R. 3 Q. B. 360; United States v. Stenker, 32 Fed. 693; Reg. v. Hicklin, L. R. 2 Q. B. 360; Reg. v. Grey, 4 Frost & Fin. 73; Knowles v. State, 3 Day, 103; Com. v. Sharpless, 2 Serg. & R. 91; Harring v. Walround, 2 Chan. Cas. 110; Reg. v. Saunders, 13 Cox Cr. Cas. 116; Com. v. Landis, 8 Phila 453; State v. Roper, 1 Dev. & Bat. 208; Reg. v. Elliot, Leigh & Cave, 103.

§ 1141-a. [Added, 1909.] Indecent prints and pictures in public places.

Any person who shall expose, place, display, post up, exhibit or paint, print or mark, or cause to be exposed, placed, displayed, posted, exhibited or painted, printed or marked in or on any building, structure, billboard, wall or fence, or on the street, or in or upon any public place, any placard, poster, bill or picture, or shall knowingly permit the same to be displayed on property belonging to or controlled by him, which placard, poster, bill or picture shall tend to demoralize the morals of youth or others or which shall be lewd, indecent, or immoral, shall be guilty of a misdemeanor.

Added by L. 1909, ch. 280. In effect Sept. 1, 1909.

§ 1142. Indecent articles.

A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for the prevention of con-

ception, or for causing unlawful abortion, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section eleven hundred and forty-one of this chapter.

Derivation: Penal Code, § 318, as amended L. 1887, ch. 692, § 2.

Halstead v. Nelson (1885), 36 Hun, 149; People v. Spier (1907), 120 App. Div. 787.

§ 1143. Mailing or carrying obscene prints and articles.

A person who deposits, or causes to be deposited, in any post-office within the state, or places in charge of an express company, or of a common carrier, or other person, for transportation, any of the articles or things specified in the last two sections, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail or express, or in any other manner, or who knowingly or wilfully receives the same, with intent to carry or convey, or knowingly or wilfully carries or conveys the same, by express, or in any other manner except in the United States mail, is guilty of a misdemeanor.

Derivation: Penal Code, § 319.

Halstead v. Nelson (1885), 36 Hun, 153.

§ 1144. Warrant to sheriff to search.

A magistrate having jurisdiction to issue warrants in criminal cases, upon complaint that any person within his jurisdiction is offending against the provisions of this article, supported by oath or affirmation, must issue a warrant, directed to the sheriff or to any constable, marshall, or police officer within the county, directing him to search for, seize, and take possession of any of the articles specified in this article, in the possession of the person against whom complaint is made. The magistrate must imme-

diately transmit every article seized by virtue of the warrant, to the district attorney of the county, who must, upon the conviction of the person from whose possession the same was taken, cause it to be destroyed, and the fact of such destruction to be entered upon the records of the court in which the conviction is had.

Derivation: Penal Code, § 320.

§ 1145. Physicians' instruments.

An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this article. The supplying of such articles to such physicians or by their direction or prescription, is not an offense under this article.

Derivation: Penal Code, § 321.

§ 1146. Keeping disorderly houses.

Whoever keeps or maintains a house of ill-fame, or a place for the practice of prostitution or lewdness, or takes as lessee any house, room or other premises for any such purposes, or shall keep a lewd, ill-governed or disorderly house to the encouragement of fornication or other misbehavior shall be guilty of a misdemeanor. When the lessee or keeper of a dwelling-house or other building is convicted under this section, the lease or contract for letting the premises shall, at the option of the lessor, become void and the lessor may have the like remedy to recover the possession as against a tenant holding over after the expiration of his term. And whoever as lessor knowingly or with good reason to know, permits any house or room or other part of any premises to be used in whole or in part for any of the uses or purposes herein prohibited shall be guilty of a misdemeanor. Upon conviction of any person for a violation of the provisions of this section, the court before whom such conviction shall have been had, or the clerk of such court if there be a clerk, shall forthwith make and file in the office of the clerk of the county, in which said conviction shall have been had, a certified statement of said conviction and sentence, if any; and the clerk of said county shall immediately enter in the judgment docket book in said office the amount of the penalty or fine imposed, as a judgment against the person so convicted or sentenced. (Amended by L. 1910, ch. 619, in effect Sept. 1, 1910.)

Derivation: Penal Code, § 322, as amended L. 1887, ch. 690, § 1; L. 1905, ch. 270, § 1.

Ely v. Supvrs. (1867), 36 N. Y. 297, aff'g 46 Barb. 659; Jacobowisky v. People (1876), 6 Hun, 524, 64 N. Y. 659; Barnesciotta v. People (1877), 10 Hun, 137, 69 N. Y. 612; Berry v. People (1878), 1 N. Y. Cr. 43, aff'd in Ct. of App. 1879; King v. People (1880), 83 N. Y. 590; King v. People (1880), 83 N. Y. 587; King v. People (1880), 83 N. Y. 588; People ex rel. Van Houton v. Sadler (1884), 97 N. Y. 146, 3 N. Y. Cr. 473; People v. Miller *(1885), 3 N. Y. Cr. 475,* 38 Hun, 83; Lawton v. Steele (1890), 119 N. Y.

239, aff'g 5 N. Y. Supp. 953; People v. Upson (1894), 79 Hun, 87, 29 N. Y. Supp. 615; People v. James (1896), 11 App. Div. 609, 43 N. Y. Supp. 315, 12 N. Y. Cr. 196; People v. Burns (1897), 19 Misc. 680, 44 N. Y. Supp. 1106; Plath v. Kline (1897), 18 App. Div. 240, 45 N. Y. Supp. 951; People v. Herlihy (1901), 66 App. Div. 534, 16 N. Y. Cr. 235, 73 N. Y. Supp. 236, rev'g 35 Misc. 711, 16 N. Y. Cr. 33, 72 N. Y. Supp. 389; People ex rel. Warren v. Brady (1902), 37 Misc. 126, 74 N. Y. Supp. 973; City of Buffalo v. Preston (1903), 81 App. Div. 480, 80 N. Y. Supp. 851; People v. Miller (1903), 81 App. Div. 460, 492, 80 N. Y. Supp. 851; People v. Champlin (1907), 120 App. Div. 509; Morton v. Knipe (1908), 128 App. Div. 96; People v. Jones (1908), 191 N. Y. 292; see also Arrus v. Richardson, 5 N. Y. Supp. 755; People v. Carey, 4 Park, 238; People v. Erwin, 4 Den. 129; People v. Hatter, 22 N. Y. Supp. 690; Lowenstein v. People, 54 Barb. 299; People v. Mauch, 24 How. Pr. 276; Moody v. Supervisors, 46 Barb. 659; People v. Rowland, 1 Wheel. Cr. Cas. 286; People v. Wallach, 15 N. Y. Supp. 876; Wooster v. State, 55 Ala. 217; State v. Hanchett, 36 Conn. 35; Henson v. State, 63 Md. 231, 50 Am. Rep. 204, 5 Crim. L. Mag. 693; Com. v. Hopkins, 133 Mass. 381, 43 Am. Rep. 527; Handy v. State, 63 Miss. 207, 56 Am. Rep. 803; State v. Fletcher, 18 Mo. 425; State v. Dame, 60 N. H. 479, 49 Am. Rep. 331; Troutman v. State, 49 N. J. L. 33; State v. Smith, 29 Minn. 195; Killman v. State, 2 Tex. App. 222, 28 Am. Rep. 432; Herzinger v. State, 70 Fed. 278; King v. State, 17 Fed. 190; Com. v. Kimball, 7 Gray, 328; United States v. Gray, 2 Cranch. C. C. 675; Com. v. Harrington, 3 Pick. 26.

§ 1147. Who may arrest persons violating provisions of this article.

Any agent of the New York society for the suppression of vice, upon being designated thereto by the sheriff of any county in this state, may within such county make arrests and bring before any court or magistrate thereof having jurisdiction, offenders found violating the provisions of any law for the suppression of the trade in, and circulation of obscene literature and illustrations, advertisements and articles of indecent and immoral use, as it is or may be forbidden by the laws of this state, or of the United States.

Derivation: L. 1875, ch. 205.

§ 1148. Male person living on proceeds of prostitution.

Every male person who lives wholly or in part on the earnings of prostitution, or who in any public place solicits for immoral purposes, is guilty of a misdemeanor. A male person who lives with or is habitually in the company of a prostitute and has no visible means of support, shall be presumed to be living on the earnings of prostitution. (Added by L. 1910, ch. 382, in effect Sept. 1, 1910.)

ARTICLE 108.

INDIANS.

SECTION 1160. Trespasses on Indian land.
1161. Trespasses on Onondaga reservation.

§ 1160. Trespasses on Indian land.

A person who cuts, removes, causes to be removed or aids or assists in removing from the Alleghany, Cattaraugus, Tonawanda or Onondaga reservations any wood, trees, timber, bark or poles, except as authorized by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 640a, added L. 1893, ch. 692, § 2.

§ 1161. Trespasses on Onondaga reservation.

A person, other than an Onondaga Indian, who cuts or removes from the Onondaga reservation any tree, timber, wood, bark or poles; or an Indian who cuts for the purpose of sale or removal from such reservation, or who removes, causes to be removed or aids in the removal from such reservation of any tree, timber, wood, bark or poles, except on the written permission of a majority of the chiefs of the Onondaga tribe, particularly specifying the quantity and kind of trees, timber, wood, bark or poles to be cut or removed, is guilty of a misdemeanor.

Derivation: Penal Code, § 640b, added L. 1893, ch. 692, § 2.

ARTICLE 110.

* INSOLVENCY

SECTION 1170. Fraudulent conveyances of property.
1171. Fraudulent removal of property to prevent levy.
1172. Knowingly receiving property removed to defraud creditors.
1173. Concealment of effects of insolvent debtor.

§ 1170. Fraudulent conveyances of property.

A person who:

1. Becomes a party to a conveyance or assignment of real or personal property, or of an interest therein, with intent to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other persons; or,

2. Being a party or privy to, or knowing of, such a conveyance or assignment so made, wilfully puts the same in use as having been made in good faith,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 586.

Lapham v. Marshall (1889), 51 Hun, 36, 40, 3 N. Y. Supp. 601; Loos v. Wilkinson (1889), 113 N. Y. 485, rev'g 51 Hun, 74, 5 N. Y. Supp. 410; Shaffer v. Martin (1898), 25 App. Div. 501, 49 N. Y. Supp. 853; Wright v. Hart (1905), 182 N. Y. 330, 347; Loomis v. People (1880), 19 Hun, 601, 46 How. Pr. 247; People v. Schlessel (1908), 127 App. Div. 510; see also People v. Morrison, 13 Wend. 399; Stringfield v. Fields, 13 Daly, 173; Thomas v. People, 19 Wend. 480.

§ 1171. Fraudulent removal of property to prevent levy.

A person who with intent to defraud a creditor, or to prevent any of his property from being made liabe for the payment of any of his debts, or levied upon by an execution or warrant of attachment, removes any of his property or secretes, assigns, conveys or otherwise disposes of the same; or with intent to defraud a creditor, removes, secretes, assigns, conveys or otherwise disposes of any of his books of account, accounts, vouchers or writings in any way relating to his business affairs, or destroys, obliterates, alters or erases any of such books of account, accounts, vouchers or writings, or any entry, memorandum or minute therein contained, is guilty of a misdemeanor.

Derivation: Penal Code, § 587, as amended L. 1893, ch. 681, § 1.

* The Standard and Leading Works are Collier on Bankruptcy and Moore on Fraudulent Conveyances.

§ **1172. Knowingly receiving property removed to defraud creditors.**

A person who receives any property from another knowing that the same is transferred or delivered to him in violation of, or with intent to violate, the last section, is guilty of a misdemeanor.

Derivation: Penal Code, § 588.

§ **1173. Concealment of effects of insolvent debtor.**

A person who being an applicant, as an insolvent debtor, for a discharge from his debts, or for exoneration or discharge from imprisonment, or having made a general assignment of his property for the payment of his debts, wilfully:

1. Conceals any part of his estate or effects, or any book, account, or other writing relative thereto; or,

2. Omits to disclose, to the court before which his application is pending, any debt or demand which he has collected, or any transfer of property which he has made, since the presentation of his application; or,

3. Fraudulently presents, or authorizes to be presented in his behalf, such an application, in a case where it is not authorized by law; or,

4. Makes or presents to the court or officer in support of such an application, a petition, schedule, book, account, voucher, or other paper or document, knowing the same to contain a false statement; or,

5. Fraudulently makes and exhibits, or alters, obliterates, or destroys an account or voucher, relating to the condition of his affairs, or an entry or statement in such an account or voucher; or,

6. Commits any fraud upon a creditor, to induce him to petition for, or consent to such a discharge; or,

7. Conspires with, or induces another fraudulently to consent as creditor to a petition for such discharge, or to practice any fraud in aid thereof,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 589.

Dickinson v. Benham, 10 Abb. Pr. 390, 19 Abb. Pr. 158; Gasherie v. Apple, 14 Abb. Pr. 64; McButt v. Hirsch, 4 Abb. Pr. 441; Ion v. People, 12 Wend. 344; People v. Morrison, 13 Wend. 399; Vanderwerken v. People, 6 Wend. 530.

ARTICLE 112.

INSURANCE.

SECTION 1190. False statements in applications for membership in fraternal benefit associations.
1191. Discriminations and rebates by life insurance corporations prohibited.
1192. Acting as agent of life insurance corporation without certificate of authority.
1193. Fire insurance corporations to use standard policy only.
1194. Over-charges by marine insurance agents.
1195. Misconduct of officers and agents of corporations for the insurance of domestic animals.
1196. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.
1197. Misconduct of officers and agents of co-operative insurance companies.
1198. Acts of agents of fire or marine insurance corporation, organized in other countries, after revocation of certificate.
1199. Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.
1200. Receiving rebates on life insurance; privileges of witnesses in investigations relating thereto.
1201. Destroying property insured.
1202. Presenting false proofs of loss in support of claim upon policy of insurance.

§ 1190. False statements in application for membership in fraternal benefit associations.

Any applicant, officer, agent, solicitor, examining physician, surgeon or other person, who knowingly or wilfully makes any false or fraudulent statements or representations in or with reference to any application for membership or reinstatement or any other documentary or other proof for the purpose of obtaining or reinstating membership in or benefit from any fraternal beneficiary society, order or association, any corporation, association or society transacting the business of life or casualty insurance or both, upon the co-operative or assessment plan, or a corporation for the insurance of domestic animals, is guilty of a misdemeanor.

Derivation: Penal Code, § 577a, added L. 1892, ch. 692, § 1, and amended L. 1893, ch. 692, § 1.

§ 1191. Discriminations and rebates by life insurance corporations prohibited.

Any life insurance corporation doing business in this state, or any officer or agent thereof, who:

1. Makes any discrimination in favor of individuals of the same class or of the same expectation of life either in the amount of the premium charged or in any return of premiums, dividends or other advantages; or,

2. Makes any contract for insurance or agreement as to such contract other than that which is plainly expressed in the policy issued; or,

3. Pays or allows, or offers to pay or allow as an inducement to any person to insure, any rebate or premium, or any special favor or advantage whatever, in the dividends to accrue thereon or any inducement whatever not specified in the policy; or,

4. Makes any distinction or discrimination between white persons and colored persons, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons, or in any other manner whatever; or demands or requires a greater premium from such colored persons than is at that time required by such company from white persons of the same age, sex, general condition of health and prospect of longevity; or makes or requires any rebate, diminution or discount upon the amount to be paid on such policy in case of the death of such colored persons insured, or inserts in the policy any condition, or makes any stipulation whereby such person insured shall bind himself, or his heirs, executors, administrators and assigns to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 577b, added L. 1892, ch. 692, § 1.

Madden v. Underwriting Pub. Co. (1894), 10 Misc. 27, 30 N. Y. Supp. 1052.

§ 1192. Acting as agent of life insurance corporation without certificate of authority.

Any person acting as agent, subagent or broker of a life insurance corporation doing business in this state, except as agent operating solely on the weekly payment plan of insurance, who solicits or procures applications for insurance without first pro-

curing a certificate of authority from the superintendent of insurance, is guilty of a misdemeanor.

Derivation: Penal Code, § 577c, added L. 1892, ch. 692, § 1.

Wyatt v. McNamee (1906), 50 Misc. 348, 98 N. Y. Supp. 749.

§ 1193. Fire insurance corporations to use standard policy only.

Any fire insurance corporation, or any officer or agent thereof, who makes, issues, delivers, or offers to deliver any policy of insurance on property in this state, which does not conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with the printed form of contract or policy filed in the office of the secretary of state, known and designated as the " Standard fire insurance policy of the state of New York," except as to such exceptions as are specially provided and allowed by law, is guilty of a misdemeanor, punishable by a fine of not less than twenty-five nor more than one hundred dollars for the first offense, and of not less than one hundred or more than two hundred and fifty dollars for each subsequent offense.

Derivation: Penal Code, § 577d, added L. 1892, ch. 692, § 1.

Gough v. Davis (1898), 24 Misc. 245, 52 N. Y. Supp. 947; Bellinger v. German Ins. Co. (1906), 51 Misc. 466, 100 N. Y. Supp. 424.

§ 1194. Over-charges by marine insurance agents.

Any agent, shipper or other person, representing or acting for a marine insurance corporation doing business in this state who:

1. Charges or receives, directly or indirectly from any person for insurance of any property in transit upon the canals of the state, any greater sum than the regular rates of premium fixed by the corporation for the insurance of such property; or,

2. Demands or receives upon any policy of insurance issued upon any such property, for the business of obtaining such insurance, a sum of money, as compensation or renumeration by way of salary, commission or in any other capacity, which includes in any case, over fifteen per centum of the premium,

Is guilty of misdemeanor.

Derivation: Penal Code, § 577e, added L. 1892, ch. 692, § 1.

§ 1195. Misconduct of officers and agents of corporations for the insurance of domestic animals.

Any officer or agent of a corporation organized for the insurance of domestic animals who:

1. Refuses to make any report or perform any duty required by law; or,

2. Intentionally makes any false or fraudulent statement or report,

Is guilty of a misdemeanor punishable by a fine of not less than one hundred or more than five hundred dollars.

Derivation: Penal Code, § 577f, added L. 1892, ch. 692, § 1.

§ 1196. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.

Any officer, manager, director or agent of a casualty insurance corporation upon the co-operative or assessment plan, organized under the laws of this state, who transfers its risks or assets or any part thereof to or reinsures its risks or any part thereof, in any insurance corporation or association of another state or country which is not, at the time of such transfer or reinsurance authorized by law to do insurance business in this state, is guilty of a misdemeanor.

Derivation: Penal Code, § 577g, added L. 1892, ch. 692, § 1.

§ 1197. Misconduct of officers and agents of co-operative insurance companies.

Any officer, agent or representative of a corporation, association, or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, who:

1. Neglects or refuses to perform any duty required of him by law; or,

2. Intentionally makes any false or fraudulent statement or report; or,

3. Refuses to permit the superintendent of insurance or any examiner duly authorized by him for the purpose, to make an examination of the condition and business, books, papers and vouchers of any such corporation, association or society; or,

4. Thirty days after any such corporation has been notified by the superintendent of insurance to designate some person residing *in the* same city, village or town where the principal business

office within the state of such corporation is located, as a person upon whom service of legal process and papers may be made, as provided by law, collects any money or issues any certificate in carrying on such business, during the failure of such corporation to designate such person; or,

5. Being within this state the agent or representative of any such corporation, association or society, which has neglected or refused to comply with any duty imposed upon it by law, or which has failed or neglected to procure from the superintendent of insurance the certificate of authority to transact business within this state as provided by law, acts as such agent, during such period of default,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 577h, added L. 1892, ch. 692, § 1.

§ 1198. Acts of agents of fire or marine insurance corporation, organized in other countries, after revocation of certificate.

Any agent of a fire or marine insurance corporation, incorporated by or existing under the government or laws of another country than the United States, and doing business in this state, who issues any new policy of insurance after having been notified by the superintendent of insurance that the certificate of such corporation to do business within this state has been revoked, is guilty of a misdemeanor.

Derivation: Penal Code, § 577i, added L. 1892, ch. 692, § 1.

§ 1199. Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.

Any person acting for himself or for others not having been specially licensed, as provided by law, by the superintendent of insurance, who solicits or procures, or aids in the solicitation or procurement of policies or certificates of insurance from, or adjusts losses or in any manner aids the transaction of any business for, any foreign insurance corporation, which has not executed and filed in the office of the superintendent of insurance, a written appointment of the superintendent to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful process in any action or proceeding against the corporation may be served, is guilty of a misdemeanor.

Derivation: Penal Code, § 577j, added L. 1892. ch. 692, § 1.
Burges v. Jackson (1897), 18 App. Div. 296, 46 N. Y. Supp. 326.

§ **1200. Receiving rebates on life insurance; privileges of witnesses in investigations relating thereto.**

Any person knowingly receiving any rebate or allowance or deduction from any premium, or any valuable thing, special favor or advantage whatever, as an inducement to take any policy of life insurance, not specified in the policy is guilty of a misdemeanor.

No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Derivation: Penal Code, § 577k, added L. 1906, ch. 231, § 1, and amended L. 1907, ch. 741, § 1.

§ **1201. Destroying property insured.**

A person who, with intent to defraud or prejudice the insurer thereof, wilfully burns, or in any manner injures or destroys property not included or described in section fifteen hundred and six, which is insured at the time against loss or damage by fire or by any other casualty, under such circumstances that the offense is not arson in any of its degrees, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 578.

§ **1202. Presenting false proofs of loss in support of claim upon policy of insurance.**

A person who knowing it to be such:

1. Presents, or causes to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss upon a contract of insurance; or,

2. Prepares, makes or subscribes a false or fraudulent account,

certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim,

Is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 579, as amended L. 1882, ch. 384, § 1.

People v. Vaughan (1897), 19 Misc. 298, 42 N. Y. Supp. 959, 11 N. Y. Cr. 388; People v. Spiegel (1894), 75 Hun, 162, 26 N. Y. Supp. 1041.

ARTICLE 114.

INTOXICATION.

SECTION 1220. Intoxication as a defense.
1221. Intoxication in a public place.

§ 1220. Intoxication as a defense.

No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

Derivation: Penal Code, § 22.

People v. Eastwood (1856), 3 Park, 25, 14 N. Y. 562; People v. Rogers (1858), 18 N. Y. 9; Kenny v. People (1865), 31 N. Y. 330, 27 How. Pr. 202, 18 Abb. Pr. 91; Real v. People (1870), 42 N. Y. 270; Flanigan v. People (1881), 86 N. Y. 554, 40 Am. Rep. 556; People v. Burns (1884), 33 Hun, 296, 2 N. Y. Cr. 415; People v. Mills (1885), 98 N. Y. 176, 3 N. Y. Cr. 187; People v. Fish (1890), 125 N. Y. 136; People v. Leonardi (1894), 143 N. Y. 365; People v. Corey (1895), 148 N. Y. 476, 12 N. Y. Cr. 151; Felska v. Railroad Co. (1897), 152 N. Y. 340; People v. Martin (1898), 33 App. Div. 282, 53 N. Y. Supp. 745; People v. Gaynor (1898), 33 App. Div. 98, 53 N. Y. Supp. 86; People v. Krist (1901), 168 N. Y. 19, 15 N. Y. Cr. 542; People v. Kent (1903), 41 Misc. 193, 83 N. Y. Supp. 948, 17 N. Y. Cr. 461; People v. Pekarz (1906), 185 N. Y. 480, 20 N. Y. Cr. 169; People v. Koerner (1907), 117 App. Div. 49, 102 N. Y. Supp. 93, 20 N. Y. Cr. 526; see also People v. Batting, 49 How. Pr. 392; People v. Hammill, 2 Park, 223; Lonergan v. People, 6 Park, 209, 50 Barb. 266, 34 How. Pr. 390; O'Brien v. People, 48 Barb. 274; People v. Williams, 43 Cal. 344; State v. Trivas, 32 La. Ann. 1086, 36 Am. Rep. 293; United States v. Drew, 5 Mason, 28; State v. McGonigal, 5 Harring, 510.

§ 1221. Intoxication in a public place.

Any person intoxicated in a public place may be arrested without warrant while so intoxicated, and be taken before a magistrate having jurisdiction for examination on a charge of public intoxication. If such charge is sustained the court or magistrate shall:

1. Release such person on probation for a period not exceeding one year, and may in addition impose a fine not exceeding ten dollars payable in instalments as the court may direct; or,

2. Impose upon such person a fine not exceeding ten dollars, or a sentence of imprisonment not exceeding six months, or both such fine and imprisonment; or,

3. Cause such person to be committed to a hospital and industrial colony as provided in subdivision two of section one hundred and thirty-nine-a of the general municipal law.

Provided that, whenever in any city a board of inebriety shall have certified in writing to the mayor of such city that the hospital and industrial colony of said board is ready to receive inmates, and notwithstanding any other provision of law, the court or magistrates having jurisdiction, shall:

a. Dismiss the complaint upon the receipt of a written request for release from a person arrested for public intoxication and upon the receipt of a report from a probation officer of the board of inebriety as provided in subdivision one of section one hundred and thirty-nine-a of the general municipal law; or,

b. Issue warrant for the arrest of such person released pursuant to the provisions of subdivision one of section one hundred and thirty-nine-a of the general municipal law, and make such disposition of the case as is authorized in the subsequent provisions of this section; or,

c. Release such person, under the supervision of a probation officer appointed by the board of inebriety, for a period not exceeding one year and upon such conditions as the court may impose. Upon violation of any of these conditions the probationer may be arrested on a warrant issued by the president or secretary of the board of inebriety and brought before the court. The court may, thereupon, impose sentence upon such probationer as provided in the subsequent provisions of this section and shall do so if the probationer has been released under supervision two or more times and has twice violated the conditions of his release; or,

d. Release such person on probation as in the next preceding subdivision of this section, and in addition impose a fine not exceeding twenty-five dollars. Such fine may be paid in instalments in such amounts and at such times as the court may determine and shall be paid to the board of inebriety in such manner as said board may direct. Upon failure to pay such fine as directed, the probationer may be arrested and brought before the

court as provided in the next preceding subdivision of this section. The court may, thereupon, impose sentence upon such probationer as provided in the subsequent provisions of this section and shall do so if the probationer has been released two or more times with an added fine imposed and has twice failed to pay the fine. All fines and portions of fines so collected shall be reported to the court by which such fine was imposed; or,

e. Commit such person to the custody of the board of inebriety on an indeterminate sentence, for a period not exceeding six months, provided such person has not been previously committed to the custody of such board, and provided he has been proviously arrested for public intoxication two or more times within the twelve months next preceding; or,

f. Commit such person to the custody of the board of inebriety on an indeterminate sentence, for a period of not less than six months nor more than one year, provided such person has previously been committed to such board; or,

g. Commit such person to the custody of the board of inebriety on an indeterminate sentence, for a period of not less than one year nor more than three years, provided such person has been previously committed two or more times to such board; or,

h. Commit such person to a penitentiary for a period of not less than one year nor more than three years, provided such person has previously been committed to the board of inebriety and the board has applied to the court to be released from the care and custody of such person as provided in subdivision five of section one hundred and thirty-nine-a of the general municipal law. The provisions of section twelve hundred and twenty-one shall not apply to the city of New York. (Amended by L. 1911, ch. 700, in effect July 19, 1911.)

Derivation: Liquor Tax Law, L. 1896, ch. 112, § 40, in part, as amended L. 1897, ch. 312, § 28. For remainder of section, see § 1912, *post*.

ARTICLE 116.

JURIES AND JURORS.

SECTION 1230. Definition of juror.
1231. Misconduct of officers at drawing of jurors and the formation of a jury.
1232. False certificate as to jurors in New York city or Kings county.
1233. False swearing perjury in New York county.
1234. Misconduct as to trial jurors in Kings county.
1235. Misconduct by trial jurors in New York county.
1236. Punishment for giving false information as to juror or suppressing notice to attend, in Kings county.
1237. Grand juror acting after challenge has been allowed.

§ 1230. Definition of juror.

The word "juror" as used in section twelve hundred and thirty-one of this article, includes a talesman, and extends to jurors in all courts, whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

Derivation: Penal Code, § 81.

§ 1231. Misconduct of officers at drawing of jurors and the formation of a jury.

A person authorized by law to assist at the drawing or impaneling of grand or trial jurors to attend a court, or a term of a court, or to try any cause or issue, or to assist in the formation of a jury, who:

1. Designedly puts, or consents to the putting, upon a list of jurors as having been drawn, any name which was not lawfully drawn for that purpose; or,

2. Designedly omits to place on such a list any name which was lawfully drawn; or,

3. Designedly signs or certifies a list of such jurors as having been drawn which was not lawfully drawn; or,

4. Designedly withdraws from the box, or other receptable for the ballots containing the names of such jurors, any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omits to place in such box or receptacle any name lawfully drawn or designated, or places in such box or receptacle

a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or,

5. In the drawing of such jurors, does any act which is unfair, partial or improper in any other respect; or,

6. Violates any of the provisions of sections eleven hundred and sixty-three, eleven hundred and sixty-four, or eleven hundred and sixty-five of the code of civil procedure,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 76, as amended L. 1905, ch. 692, § 1.

§ 1232. False certificate as to jurors in New York city or Kings county.

A physician, who knowingly gives a false certificate, or makes a false representation, for the purpose of enabling or assisting a person, to be discharged, excused or exempted from service, as a trial juror in the city and county of New York, or in the county of Kings, is guilty of a misdemeanor.

Derivation: Code of Civil Proc., §§ 1120, 1141.

§ 1233. False swearing, perjury in New York county.

In New York county a person, who swears falsely in an affidavit, or testifies falsely upon an inquiry, made as prescribed in article seventeen of the judiciary law, is guilty of perjury, in a case where falsely swearing, in an affidavit, used upon a motion in a civil action, or falsely testifying, upon the trial of an issue of fact in such an action, would constitute that crime.

Derivation: Code of Civil Proc., § 1125.

§ 1234. Misconduct as to trial jurors in Kings county.

If the commissioner of jurors in Kings county, or either of his assistants, or a clerk or other person, employed by him, corruptly and without sufficient cause, omits the name of a person, duly drawn, from a panel of trial jurors, or the ballot, containing the name of such a person, from either of the boxes prescribed in article eighteen of the judiciary law; or, directly or indirectly, receives a fee, reward, compensation, or advantage, in consideration of, or as an inducement to such an omission; he is guilty of a felony, and shall, on conviction, be punished by imprisonment in a state prison, for a term not less than two, nor more than five years.

A wilful omission by the commissioner of jurors in Kings county, of a duty required of him by article eighteen of the judiciary law, other than that specified in this section, is a misdemeanor.

Derivation: Code of Civil Proc., §§ 1158-1159.

§ **1235. Misconduct by trial jurors in New York county.**

1. A person who gives, pays, promises, or offers, money, or any other thing, to the commissioner of jurors, the sheriff, the county clerk, or other clerk of a court; or to the deputy of, or a person employed by, the county clerk or other clerk of a court; or to an officer, messenger, or other person, employed by the sheriff, or the commissioner of jurors; for the purpose of enabling or assisting himself, or any other person, named or drawn as a tral juror, to evade, or to be discharged, exempted, or excused from service; or who knowingly makes a false statement or representation, to a judge, the commissioner of jurors, or a member of the board of enforcement of jury fines, for such a purpose; or who knowingly retains, conceals, suppresses, or wilfully destroys, a notice to attend, before the commissioner of jurors, or at a term of a court, or any other paper, relating to the liability to serve, or service, as a trial juror, left at the residence or place of business of another, who has been named or drawn as a trial juror, is guilty of a misdemeanor. The district attorney must prosecute for each offense, specified in this section, which comes to his knowledge.

2. In New York county any person who takes money, or any other thing, as a gift, bribe, or payment, for the purpose of enabling or assisting a person, named or drawn as a trial juror, to evade, or to be discharged, exempted or excused from jury duty; or who wilfully and knowingly prevents or hinders the execution of any provision of article seventeen of the judiciary law, is guilty of a misdemeanor.

3. A person, named or drawn as a trial juror in New York county, to whom an offer or suggestion to procure his discharge, exemption, or excuse from jury duty, for or in consideration of a corrupt inducement or reward, is made by any person, and who fails, within twenty-four hours thereafter, to inform the commissioner of jurors thereof, is guilty of a misdemeanor.

Derivation: Code of Civil Proc., §§ 1122-1124.

§ 1236. Punishment for giving false information as to juror or suppressing notice to attend, in Kings county.

A person, to whom application is made, within the county of Kings, by an assessor, or by the commissioner of jurors, or either of his assistants, for information, as to a fact, upon which the liability of himself, or any other person, to serve as a trial juror, depends, and who refuses to give information relating thereto, which he can give, or knowingly gives false information relating thereto; or a person who knowingly makes to an assessor, or to the commissioner of jurors, or a person acting by his authority, a false representation as to the identity, residence, or any other matter, relating to a juror, duly drawn, and placed on a panel to be notified; or who knowingly retains, conceals, suppresses, or wilfully destroys, a notice to attend, left at the residence or place of business of another, who has been drawn as a trial juror, is guilty of a misdemeanor.

Derivation: Code of Civil Proc., § 1160.

§ 1237. Grand juror acting after challenge has been allowed.

A grand juror who, with knowledge that a challenge, interposed against him by a defendant, has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

Derivation: Penal Code, § 144.

ARTICLE 118.

KIDNAPPING.

SECTION 1250. Kidnapping defined.
1251. Indictment for kidnapping, where triable.
1252. Consent of kidnapped person.
1253. Selling services of person kidnapped.
1254. Removing from this state persons held to service in another state.
1255. Penalty imposed on judicial officers.

§ 1250 Kidnapping defined.

A person who wilfully:

1. Seizes, confines, inveigles, or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of the state, or to be sold as a slave, or in any way held to service or kept or detained, against his will; or,

2. Leads, takes, entices away, or detains a child under the age of sixteen years, with intent to keep or conceal it from its parents, guardian, or other person having the lawful care or control thereof, or to extort or obtain money or reward for the return or disposition of the child, or with intent to steal any article about or on the person of the child; or,

3. Abducts, entices, or by force or fraud unlawfully takes, or carries away another, at or from a place without the state, or procures, advises, aids or abets such an abduction, enticing, taking, or carrying away, and afterwards sends, brings, has or keeps such person, or causes him to be kept or secreted within this state,

Is guilty of kidnapping, which is a felony and is punishable, if a parent of the person kidnapped, by imprisonment for not more than ten years and, if a person other than a parent of the person kidnapped, by imprisonment for not less than ten years nor more than fifty years. (Amended by L. 1909, ch. 246; L. 1911, ch. 625, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 211(2), as amended L. 1888, ch. 145, § 3; Penal Code, § 211 (3), as amended L. 1907, ch. 683, § 1.

Hadden v. People (1862), 25 N. Y. 373; Kauffman v. People (1877), 11 Hun, 82; People v. Navagh (1886), 4 N. Y. Cr. 289, 41 Hun, 188; People v. De Leon (1888), 109 N. Y. 228, 4 Am. St. Rep. 444, aff'g 47 Hun, 308; People v. Fitzpatrick (1890), 57 Hun, 459, 10 N. Y. Supp. 629, 8 N. Y. Cr. 81; People v. Camp (1893), 139 N. Y. 87, aff'g 66 Hun, 531, 21 N Y. Supp. 741; Matter of Marceau (1900), 32 Misc. 217, 65 N. Y. Supp. 717; People v.

Panyko (1902), 71 App. Div. 324, 75 N. Y. Supp. 945; see also People v. Brunnell, 18 How. Pr. 443; Carpenter v. People, 8 Barb. 603; Mandeville v. Guernsey, 51 Barb. 99; People v. Tinsdale, 10 Abb. Pr. (N. S.) 374; Moody v. People, 20 Ill. 315; State v. Rollins, 8 N. H. 550; Nutt v. State, 19 Tex. 340; Manes v. State, 20 Tex. 38; United States v. Ancarola, 1 Fed. 676, 17 Blatchf. 423; Com. v. Brooks, 9 Gray, 299.

§ 1251. Indictment for kidnapping, where triable.

An indictment for kidnapping may be tried either in the county in which the offense was committed, or in any county through or in which the person kidnapped or confined was taken or kept, while under confinement or restraint.

Derivation: Penal Code, § 212.

§ 1252. Consent of kidnapped person.

Upon a trial for a violation of this article, the consent thereto of the person kidnapped or confined shall not be a defense, unless it apears satisfactorily to the jury that such person was above the age of twelve years, and that the consent was not extorted by threats or duress.

Derivation: Penal Code, § 213.

People v. De Leon (1888), 109 N. Y. 228, 8 N. Y. Cr. 78, aff'g 47 Hun, 308.

§ 1253. Selling services of person kidnapped.

A person who, within this state or elsewhere, sells or in any manner transfers, for any term, the services or labor of any person who has been forcibly taken, inveigled, or kidnapped in or from this state, is punishable by imprisonment in a state prison not exceeding ten years.

Derivation: Penal Code, § 214.

§ 1254. Removing from this state persons held to service in another state.

A person claiming that he or another is entitled to the services of a person alleged to be held to labor or service in a state or territory of the United States who, except as authorized by special statute, takes, or removes, or wilfully does any act tending towards removing from this state any such person, is guilty of felony, punishable by imprisonment in the state prison not exceeding ten

years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

Derivation: Penal Code, § 215.

§ 1255. Penalty imposed on judicial officers.

A judge, or other public officer of this state who grants or issues any warrant, certificate or other process, in any proceeding for the removal from this state of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of the statutes of this state, is guilty of a misdemeanor; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

Derivation: Penal Code, § 216.

ARTICLE 120.

LABOR.

SECTION 1270. Refusal to admit inspector to mines, tunnels, and quarries; failure to comply with requirements of inspector.
1271. Hours of labor to be required.
1272. Payment of wages.
1273. Failure to furnish seats for female employees.
1274. No fees to be charged for services rendered by free public employment bureaus.
1275. Violations of provisions of labor law.
1276. Negligently furnishing insecure scaffolding.
1277. Neglect to complete or plank floors of buildings constructed in cities.
1278. Fraudulent representation in labor organizations.

§ 1270. Refusal to admit inspector to mines, tunnels, and quarries; failure to comply with requirements of inspector.

A person:

1. Refusing to admit the commissioner of labor, or any person authorized by him, to a mine, tunnel or quarry, and to each and every part thereof, for the purpose of examination and inspection; or,

2. Neglecting or refusing to comply with the provisions of article nine of the labor law upon written notice of the commissioner of labor,

Is guilty of misdemeanor, and upon conviction therefor shall be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days.

Derivation: Penal Code, § 384g, added L. 1897, ch. 416, § 3, and amended L. 1906, ch. 521, § 1.

§ 1271. Hours of labor to be required.

Any person or corporation:

1. Who, contracting with the state or a municipal corporation, shall require more than eight hours work for a day's labor; or,

2. Who shall require more than ten hours labor, including one-half hour for dinner, to be performed within twelve consecutive hours, by the employees of a street surface and elevated railway owned or operated by corporations whose main line of travel or routes lie principally within the corporate limits of cities *of more than* one hundred thousand inhabitants; or,

3. Who shall require the employees of a corporation owning or operating a brickyard to work contrary to the requirements of section five of the labor law; or,

4. Who shall require or permit any employee engaged in or connected with the movement of any train of a corporation operating a line of railroad of thirty miles in length, or over, in whole or in part within this state, to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours off duty within such twenty-four hour period; except when by casualty occurring after such employee has started on his trip, or by unknown casualty occurring before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal;

Is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense.

If any contractor with the state or a municipal corporation shall require more than eight hours for a day's labor, upon conviction therefor in addition to such fine, the contract shall be forfeited at the option of the municipal corporation.

Derivation: Penal Code, § 384h, added L. 1897, ch. 416, § 3; amended L. 1907, ch. 506, § 1.

People v. Orange County Road Construction Co. (1903), 175 N. Y. 84, 17 N. Y. Cr. 14, rev'g 73 App. Div. 580, 77 N. Y. Supp. 16, aff'g 37 Misc. 341, 75 N. Y. Supp. 510, 16 N. Y. Cr. 318; People ex rel. Cossey v. Grout (1904), 179 N. Y. 422; People v. Williams (1907), 189 N. Y. 131, aff'g 116 App. Div. 379, 100 N. Y. Supp. 337, 101 N. Y. Supp. 562, 51 Misc. 385; see also Street v. Varney, etc., Co., 61 L. R. A. 154; Greenwich v. Carroll, 125 Fed. 128.

§ 1272. [Am'd, 1909.] Payment of wages.

A corporation or joint stock association or person carrying on the business thereof, by lease or otherwise, who does not pay the wages of all its employees in accordance with the provisions of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than one hundred nor more than ten thousand dollars for each offense. An indictment of a person

or corporation operating a steam surface railroad for an offense specified in this section may be found and tried in any county within the state in which such railroad ran at the time of such offense.

Derivation: Penal Code, § 384i, added L. 1897, ch. 416, § 3. Am'd by L. 1909, ch. 205. In effect April 17, 1909.

People v. Schermerhorn (1908), 59 Misc. 149, 112 N. Y. Supp. 222.

§ 1273. Failure to furnish seats for female employees.

Any person employing females in a factory or mercantile establishment who does not provide and maintain suitable seats for the use of such employees and permit the use thereof by such employees to such an extent as may be reasonable for the preservation of their health, is guilty of a misdemeanor.

Derivation: Penal Code, § 384j, added L. 1897, ch. 416, § 3.

§ 1274. No fees to be charged for services rendered by free public employment bureaus.

A person connected with or employed in a free public employment bureau, who shall charge or receive directly or indirectly any fee or compensation from any person applying to such bureau for help or employment, is guilty of a misdemeanor.

Derivation: Penal Code, § 384k, added L. 1897, ch. 416, § 3.

§ 1275. Violations of provisions of labor law.

Any person who violates or does not comply with:

1. The provisions of article three of the labor law, relating to the department of labor;

2. The provisions of article four of the labor law, relating to the bureau of labor statistics;

3. The provisions of article five of the labor law, relating to the bureau of factory inspection;

4. The provisions of article six of the labor law, relating to factories;

5. The provisions of article seven of the labor law, relating to the manufacture of articles in tenements;

6. The provisions of article eight of the labor law, relating to bakeries and confectionery establishments;

7. The provisions of article eleven of the labor law, relating to mercantile establishments, and the employment of women and children therein;

8. And any person who knowingly makes a false statement in or in relation to any application made for an employment certificate as to any matter required by articles six and eleven of the labor law to appear in any affidavit, record, transcript or certificate therein provided for,

Is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than fifty dollars; for a second offense by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. (Am'd by L. 1911, ch. 749, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 384l, added L. 1897, ch. 416; amended L. 1903, ch. 380, § 1; L. 1907, ch. 506, § 2.

People v. Orange Co. Road Const. Co. (1903), 175 N. Y. 94, rev'g 73 App. Div. 581, 77 N. Y. Supp. 16, aff'g 37 Misc. 341, 75 N. Y. Supp. 510; People v. Lochner (1904), 177 N. Y. 145, aff'g 73 App. Div. 120, 76 N. Y. Supp. 396; Gallenkamp v. Garvin Machine Co. (1904), 91 App. Div. 147, 86 N. Y. Supp. 378; Sitts v. Waiontha Knitting Co. (1904), 94 App. Div. 45, 87 N. Y. Supp. 911; People v. Williams (1906), 51 Misc. 385, 100 N. Y. Supp. 337; People v. Williams (1907), 189 N. Y. 131, aff'g 116 App. Div. 379, 100 N. Y. Supp. 510; Graves v. Stickley Co. (1908), 125 App. Div. 136, 109 N. Y. Supp. 256.

§ 1276. Negligently furnishing insecure scaffolding.

A person or corporation employing or directing another to do or perform any labor in the erection, repairing, altering or painting, any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for the performance of such labor, unsafe, unsuitable or improper scaffolding, hoists, stays, ladders or other mechanical contrivances; or who hinders or obstructs any officer detailed to inspect the same, destroys or defaces any notice posted thereon, or permits the use thereof after the same has been declared unsafe by such officer contrary to the provisions of article two of the labor law, is guilty of a misdemeanor.

Derivation: Penal Code, § 447a, added L. 1893, ch. 692, § 2; amended L. 1897, ch. 416, § 1.

Wingert v. Krakauer (1902), 76 App. Div. 34, 78 N. Y. Supp. 664.

§ 1277. Neglect to complete or plank floors of buildings constructed in cities.

A person, constructing a building in a city, as owner or contractor, who violates the provisions of article two of the labor law, relating to the completing or laying of floors, or the planking of such floors or tiers of beams as the work of construction progresses, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine for each offense of not less than twenty-five nor more than two hundred dollars.

Derivation: Penal Code, § 447c, added L. 1897, ch. 416, § 2.

§ 1278. Fraudulent representation in labor organizations.

Any person who represents himself or herself to be a member of, or who claims to represent a labor organization which does not exist within the state, at the time of such representation, or who has in his or her possession a credential, certificate or letter of introduction bearing a fraudulent seal, or bearing the seal of a labor organization which has ceased to exist, and does not exist at the time of such representation, and attempts to gain admission by the use of said credential, certificate or letter of introduction, as a member of any convention, or meeting of representatives of labor organizations of the state, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than twenty dollars nor more than fifty dollars, and imprisonment for not less than ten days nor more than thirty days in the jail of the county wherein such conviction is had, or by both such fine and imprisonment.

Derivation: L. 1898, ch. 671.

ARTICLE 122.

LARCENY.

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§ 1290. Larceny defined.

A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person:

1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withholds, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or,

2. Having in his possession, custody, or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association, or corporation, or as a public officer, or as a person authorized by agreement, or by competent authority, to hold or

take such possession, custody, or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof,

Steals such property, and is guilty of larceny.

Hereafter it shall not be a defense to a prosecution for larceny, or for an attempt or for conspiracy to commit the same, or for being accessory thereto, that the purpose for which the owner was induced by color or aid of fraudulent or false representation or pretense, or of any false token or writing, to part with his property or the possession thereof was illegal, immoral or unworthy.

Derivation: Penal Code, § 528, as amended L. 1907, ch. 581, § 1.

Ranney v. People (1860), 22 N. Y. 417; Thomas v. People (1866), 34 N. Y. 352; Wilson v. People (1868), 39 N. Y. 459; People v. McDonald (1870), 43 N. Y. 61; People v. Cole (1870), 43 N. Y. 508; Knickerbocker v. People (1870), 43 N. Y. 177, aff'g 57 Barb. 365; People v. McDonald (1870), 43 N. Y. 61; McCord v. People (1871), 46 N. Y. 470; Harrison v. People (1872), 50 N. Y. 518; Smith v. People (1873), 53 N. Y. 111; Bielschofsky v. People (1874), 3 Hun, 40; Hildebrand v. People (1874), 56 N. Y. 394, aff'd 1 Hun, 10, 3 Th. & C. 82; Weyman v. People (1875), 4 Hun, 511, 62 N. Y. 623; McCourt v. People (1876), 64 N. Y. 583; Abrams v. People (1876), 6 Hun, 491; Loomis v. People (1876), 67 N. Y. 322; Foote v. People (1877), 17 Hun, 218; Macino v. People (1877), 12 Hun, 127; Phelps v. People (1878), 72 N. Y. 334; Zink v. People (1879), 77 N. Y. 114, 33 Am. Rep. 589, 6 Abb. N. C. 427, rev'g 16 Hun, 396; Goldstein v. People (1880), 82 N. Y. 235; People ex rel. Phelps v. Oyer & Terminer (1880), 83 N. Y. 449; Mullaly v. People (1881), 86 N. Y. 365, 369; Shipply v. People (1881), 86 N. Y. 375, 40 Am. Rep. 551, aff'g 12 W. Dig. 239, 24 Hun, 655; Watson v. People (1882), 87 N. Y. 565, aff'g 26 Hun, 76; People v. Blanchard (1882), 90 N. Y. 319; People v. Tweed (1882), 1 N. Y. Cr. 97; Justices, etc., v. People ex rel. Henderson (1882), 90 N. Y. 12, 43 Am. Rep. 135, rev'g 26 Hun, 537; People v. Woodward (1883), 31 Hun, 57, 2 N. Y. Cr. 32, 51 Am. Rep. 312; Thorne v. Turck (1883), 94 N. Y. 95; Bork v. People (1883), 91 N. Y. 5; Webster v. People (1883), 92 N. Y. 427; People v. Baker (1884), 96 N. Y. 340; People v. Moore (1885), 37 Hun, 84, 3 N. Y. Cr. 458; People v. Grimm (1885), 3 N. Y. Cr. 317; People v. Church (1885), 3 N. Y. Cr. 57; People v. Stevens (1885), 38 Hun, 62, aff'd 109 N. Y. 634; People v. Ward (1885), 3 N. Y. Cr. 483; People v. Reavey (1885), 4 N. Y. Cr. 1, 38 Hun, 418, 39 Hun, 364; People v. Church (1885), 3 N. Y. Cr. 57, 1 How. Pr. (N. S.) 369; People v. Ward (1885), 3 N. Y. Cr. 483; People v. Morse (1885), 99 N. Y. 662, 3 N. Y. Cr. 104, 321; People v. Willett (1886), 102 N. Y. 252; People v. Cruger (1886), 102 N. Y. 510; People v. McCallam (1886), 103 N. Y. 588; People v. Civille (1887), 44 Hun, 497; People v. Dumar (1887), 106 N. Y. 502; People v. Dimick (1887), 107 N. Y. 14, rev'g 5 N. Y. Cr. 185; People v. Dumar (1887),

106 N. Y. 507; Benedict v. Williams (1888), 48 Hun, 123; Soltau v. Gerdau (1888), 48 Hun, 537, 1 N. Y. Supp. 163, aff'd 119 N. Y. 380; People v. Pollock (1889), 51 Hun, 613, 4 N. Y. Supp. 297; People v. Bliven (1889), 112 N. Y. 87; People v. Dunn (1889), 53 Hun, 381, 6 N. Y. Supp. 805, 7 N. Y. Cr. 185; People v. Brien (1889), 53 Hun, 496, 6 N. Y. Supp. 198, 7 N. Y. Cr. 166; People v. Rice (1891), 13 N. Y. Supp. 161, aff'd 128 N. Y. 649; People v. Bosworth (1892), 64 Hun, 72, 19 N. Y. Supp. 114; People v. Sherman (1892), 133 N. Y. 349, aff'g 10 N. Y. Cr. 53; People v. Gottschalk (1892), 66 Hun, 64, 20 N. Y. Supp. 777; People v. Leland (1893), 73 Hun, 162, 25 N. Y. Supp. 943; People v. Pinckney (1893), 67 Hun, 428, 22 N. Y. Supp. 118; People v. Lawrence (1893), 137 N. Y. 517, rev'g 66 Hun, 574, 21 N. Y. Supp. 818; People v. Hall (1893), 74 Hun, 96, 26 N. Y. Supp. 403; People v. Evans (1893), 69 Hun, 222, 23 N. Y. Supp. 717; People v. Jefferey (1894), 82 Hun, 409, 31 N. Y. Supp. 267; People v. Hughes (1895), 91 Hun, 354, 36 N. Y. Supp. 493, 11 N. Y. Cr. 154; People v. Hurlburt (1895), 92 Hun, 46, 36 N. Y. Supp. 867; People v. Hendrickson (1897), 12 N. Y. Cr. 321, 46 N. Y. Supp. 402; People v. Dorthy (1897), 20 App. Div. 308, 46 N. Y. Supp. 970, 156 N. Y. 237; People v. Peckens (1897), 153 N. Y. 593, aff'g 12 App. Div. 626, 43 N. Y. Supp. 1160; People v. Gaynor (1898), 33 App. Div. 102, 53 N. Y. Supp. 86; People v. Hazard (1898), 28 App. Div. 304, 50 N. Y. Supp. 1023, aff'd 158 N. Y. 727; Moss v. Cohen (1899), 158 N. Y. 240; People v. Moran (1899), 43 App. Div. 155, 59 N. Y. Supp. 312; People v. Lovejoy (1899), 37 App. Div. 52, 55 N. Y. Supp. 543, 13 N. Y. Cr. 413; People v. Livingstone (1900), 47 App. Div. 283, 62 N. Y. Supp. 9, 14 N. Y. Cr. 422; Matter of Dempsey (1900), 32 Misc. 178, 65 N. Y. Supp. 722, 15 N. Y. Cr. 90; People v. Lammerts (1900), 164 N. Y. 144, 15 N. Y. Cr. 162, aff'd 51 App. Div. 618, 64 N. Y. Supp. 1145; People v. Mitchell (1900), 49 App. Div. 531, 63 N. Y. Supp. 522, 14 N. Y. Cr. 539, aff'd 168 N. Y. 604; People v. Miller (1901), 169 N. Y. 339, rev'g 64 App. Div. 450, 72 N. Y. Supp. 253; People v. Seldner (1901), 62 App. Div. 361, 71 N. Y. Supp. 35; People v. Wheeler (1901), 169 N. Y. 487; People v. Paine (1901), 35 Misc. 763, 72 N. Y. Supp. 3, 16 N. Y. Cr. 60; People v. Monroe (1901), 64 App. Div. 130, 71 N. Y. Supp. 803, 16 N. Y. Cr. 8; People v. Hart (1901), 35 Misc. 182, 71 N. Y. Supp. 492, 15 N. Y. Cr. 483; People v. Miller (1901), 169 N. Y. 339, 88 Am. St. Rep. 546, 99 N. Y. Supp. 1005, rev'g 64 App. Div. 450; People ex rel. Albert v. Pool (1902), 77 App. Div. 148, 78 N. Y. Supp. 1026; People v. Whitman (1902), 72 App. Div. 90, 76 N. Y. Supp. 211, 16 N. Y. Cr. 463; People v. Dilcher (1902), 38 Misc. 89, 16 N. Y. Cr. 548, 77 N. Y. Supp. 108; People v. Stein (1903), 80 App. Div. 358, 80 N. Y. Supp. 847; People v. Rothstein (1903), 42 Misc. 123, 85 N. Y. Supp. 1076, 18 N. Y. Cr. 448; People ex rel. Sandman v. Brush (1903), 41 Misc. 56, 83 N. Y. Supp. 607; People v. Walker (1903), 85 App. Div. 560, 83 N. Y. Supp. 372; People ex rel. Murphy v. Crane (1903), 80 App. Div. 202, 80 N. Y. Supp. 408; People ex rel. Lacina v. Lavin (1903), 41 Misc. 53, 83 N. Y. Supp. 630, 17 N. Y. Cr. 378; People v. Thomas (1903), 83 App. Div. 226, 82 N. Y. Supp. 215; People v. Ammon (1904), 92 App. Div. 205, 87 N. Y. Supp. 358; People v. Putnam (1904), 90 App. Div. 125, 85 N. Y. Supp. 1056, 18 N. Y. Cr. 104; People v. Fletcher (1905), 110 App. Div. 231, 97 N. Y. Supp. 62; People v. Kellog (1905), 105 App. Div. 505, 94 N. Y. Supp. 617; People v.

Kellogg (1905), 105 App. Div. 505, 94 N. Y. Supp. 617; People v. Hart (1906), 114 App. Div. 9, 99 N. Y. Supp. 758; Grathwohl v. N. Y. C. & H. R. R. R. Co. (1906), 116 App. Div. 176, 101 N. Y. Supp. 667; People v. Huggins (1906), 110 App. Div. 613, 97 N. Y. Supp. 62; People ex rel. Perkins v. Kellogg (1905), 105 App. Div. 505, 94 N. Y. Supp. 617; People v. Hart (1906), 114 App. Div. 480, 100 N. Y. Supp. 160, 20 N. Y. Cr. 302; People v. Reiss (1906), 114 App. Div. 431, 99 N. Y. Supp. 1002; People v. Snyder (1906), 110 App. Div. 699, 97 N. Y. Supp. 469; People v. Koller (1906), 116 App. Div. 173, 101 N. Y. Supp. 518; People v. Eaton (1907), 122 App. Div. 706, 107 N. Y. Supp. 849; People v. Klock (1907), 55 Misc. 46, 106 N. Y. Supp. 267; Lewis v. Shaw (1907), 122 App. Div. 96, 106 N. Y. Supp. 1012; Matter of Greene (1907), 121 App. Div. 693, 106 N. Y. Supp. 425; People v. Gluck (1907), 188 N. Y. 167; People v. Burnham (1907), 119 App. Div. 302, 104 N. Y. Supp. 725, 21 N. Y. Cr. 192; People ex rel. Perkins v. Moss (1907), 187 N. Y. 410, 20 N. Y. Cr. 578; People v. Sattekau (1907), 120 App. Div. 42; People v. Neff (1908), 191 N. Y. 210, 122 App. Div. 135, 106 N. Y. Supp. 747; People v. Gallagher (1908), 58 Misc. 514, 111 N. Y. Supp. 473; Matthews & Co. v. Employer's Liability Assur. Corp. (1908), 127 App. Div. 196; see also People v. Bough, 16 N. Y. St. 18; People v. Bradley, 4 Park, 245; Butler v. Maynard, 11 Wend. 552; Crocheron's Case, 1 City Hall Rec. 177; Ellis v. People, 21 How. Pr. 359; People v. Griffin, 38 How. Pr. 475; Healy's Case, 4 City Hall Rec. 36; People v. Herman, 45 N. Y. 175; People v. Keepers, 13 N. Y. St. 357; Linnenden's Case, 1 City Hall Rec. 30; People v. Loomis, 4 Den. 380; People v. McGarren, 17 Wend. 460; Phelps' Case, 49 How. Pr. 440; Reff v. People, 2 Park, 139; People v. Sanborn, 14 N. Y. St. 129; People v. Schuyler, 6 Cow. 572; People v. Stetson, 4 Barb. 151; People v. Tompkins, 1 Park, 238; Ward v. People, 3 Hill, 395; People v. Williams, 4 Hill, 9; Wood v. State, 48 Ala. 161, 17 Am. Rep. 31; People v. Cheong Foon Ark, 61 Cal. 527; Malachi v. State (Ala.), 42 Alb. L. J. 381; People v. Rae, 66 Cal. 423, 60 Am. Rep. 102; People v. Jaurez, 28 Cal. 380; People v. Jersey, 18 Cal. 337; People v. Howard (Cal.), 67 Pac. 148; Murphy v. People, 104 Ill. 528; State v. Doe, 79 Ind. 9, 41 Am. Rep. 599; Lefler v. State, 153 Ind. 82, 45 L. R. A. 424; Com. v. Hazelwood, 84 Ky. 681; Com. v. Barry, 124 Mass. 325; State v. Harriman, 75 Me. 562, 46 Am. Rep. 423; State v. Mitchener, 98 N. C. 689; Cunningham v. State, 61 N. J. L. 67; State v. Davis, 38 N. J. L. 176, 20 Am. Rep. 367; State v. Lyman, 26 Ohio St. 400, 20 Am. Rep. 772; Wilson v. State, 18 Tex. App. 270, 51 Am. Rep. 311; Cunningham v. State, 27 Tex. App. 479; State v. Crowley, 41 Wis. 271; People v. Aitta, 28 Week. Dig. 326; Delk v. State, 60 Am. Rep. 46; Queen v. Kenny, 20 Eng. Rep. 366; People v. Burton, 16 Week. Dig. 195; Reg. v. Flowers, 16 Cox Cr. Cas. 33, 37 Eng. Rep. 797; State v. Powell, 4 L. R. A. 291; People v. Wiggins, 16 Week. Dig. 141; Reg. v. Flatman, 21 Alb. L. J. 404, 418; Mayor v. Meigs, 1 McArthur, 53, 29 Am. Rep. 578; State v. Brown, 9 Baxt. 53, 40 Am. Rep. 81; State v. Yates, 37 Alb. L. J. 232; Reg. v. Archer, 6 Cox Cr. Cas. 518; Com. v. Morrill, 8 Cush. 571; Reg. v. Goodhall, Russ. & Ryan, 461; Reg. v. Jennison, 2 Cox Cr. Cas. 158; Reg. v. Bates, 3 Cox Cr. 201; West's Case, 1 D. & B. 575; Reg. v. Ashwell, 15 Cox Cr. Cas. 1, 37 Eng. Rep. 767, 7 Crim. L. Mag. 485, 16 Q. B. Div. 190, 33 Alb. L. J. 68; Reg. *v. Hollis*, 15 Cox Cr. 345, 36 Eng. Rep. 556; Defrese v. State, 3 Heisk. 53, 8 *Am. Rep. 1; Reg. v. Buckmaster*, 12 Cox Cr. Cas. 339.

§ 1291. Severance of fixture from realty, larceny.

All the provisions of this article apply to cases where the thing taken is a fixture or part of the realty, or any growing tree, plant, or produce, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at a previous time.

Derivation: Penal Code, § 537.

Arone v. Launders (1904), 43 Misc. 138, 88 N. Y. Supp. 259; People v. Wanzer (1904), 43 Misc. 136, 88 N. Y. Supp. 281; Vroom v. Tilly (1906), 184 N. Y. 168, aff'g 99 App. Div. 516, 91 N. Y. Supp. 51, and also 28 Eng. Rep. 127; People v. Gallagher (1908), 58 Misc. 515, 111 N. Y. Supp. 473; People v. Morrison (1908), 124 App. Div. 10, 108 N. Y. Supp. 262.

§ 1292. Completed unissued instruments, property.

All the provisions of this article, and sections four hundred and forty-two and nine hundred and forty-seven of this chapter apply to cases where the property taken is an instrument for the payment of money, an evidence of debt, a public security, or a passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the maker thereof to any person as a purchaser or owner.

Derivation: Penal Code, § 536.

Phelps v. People (1878), 49 How. Pr. 437, 72 N. Y. 334; People v. Stevens (1885), 38 Hun, 62, 3 N. Y. Cr. 586, aff'd 109 N. Y. 634; People v. Ward (1885), 3 N. Y. Cr. 483; People v. Fletcher (1905), 110 App. Div. 231, 234, 97 N. Y. Supp. 62; People v. Jackson, 8 Barb. 637; People v. Wiley, 3 Hill, 194.

§ 1293. Obtaining money or property by fraudulent draft.

A person who wilfully, with intent to defraud, by color or aid of a check or draft, or order for the payment of money or the delivery of property, when such person knows that the drawer or maker thereof is not entited to draw on the drawee for the sum specified therein, or to order the payment of the amount, or delivery of the property, although no express representation is made in reference thereto, obtains from another any money or property, is guilty of stealing the same and punishable accordingly.

Derivation: Penal Code, § 529.

Smith v. People (1872), 47 N. Y. 303; Lesser v. People (1878), 12 Hun, 670, 73 N. Y. 78; Foote v. People (1879), 17 Hun, 218; People v. Cuyken-

dall (1885), 3 N. Y. Cr. 312; Sieling v. Clark (1896), 18 Misc. 465, 41 N. Y. Supp. 982; People v. Dilcher (1902), 38 Misc. 89, 77 N. Y. Supp. 108; People v. Whiteman (1902), 72 App. Div. 90, 16 N. Y. Cr. 461, 76 N. Y. Supp. 211; People v. Putnam (1904), 90 App. Div. 125, 85 N. Y. Supp. 1056; People v. Lipp (1906), 111 App. Div. 504, 98 N. Y. Supp. 86; People v. Huggins (1906), 110 App. Div. 613, 97 N. Y. Supp. 187, 20 Crim. Rep. 257; Allen's Case, 3 City Hall Rec. 118; Decosta's Case, 1 City Hall Rec. 83.

§ 1293-a. Unauthorized use of vehicles.

Any chauffeur or other person who without the consent of the owner shall take, use, operate or remove, or cause to be taken, used, operated or removed from a garage, stable, or other building or place or from any place or locality on a private or public highway, park, parkway, street, lot, field, inclosure or space an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use or purpose, steals the same and is guilty of larceny and shall be punishable accordingly.

Added by L. 1909, ch. 514; and amended by L. 1910, ch. 621, in effect June 24, 1910.

§ 1294 Grand larceny in first degree.

A person is guilty of grand larceny in the first degree, who steals, or unlawfully obtains or appropriates, in any manner specified in this article;

1. Property of any value, by taking the same from the person of another in the night time; or,

2. Property of the value of more than twenty-five dollars, by taking the same in the night time from any dwelling-house, vessel, or railway car; or,

3. Property of the value of more than five hundred dollars, in any manner whatever.

Derivation: Penal Code, § 530.

Williams v. People (1862), 24 N. Y. 405; Phelps v. People (1878), 72 N. Y. 334; People v. McTameney (1883), 13 Abb. N. C. 56, 66 How. Pr. 73, 1 N. Y. Cr. 437; People v. Bork (1884), 31 Hun, 360, 1 N. Y. Cr. 368, 91 N. Y. 5; People v. Dunn (1889), 7 N. Y. Cr. 174, 53 Hun, 384, 6 N. Y. Supp. 805; People v. Frazier (1901), 36 Misc. 280, 16 N. Y. Cr. 227, 73 N. Y. Supp. 446; People v. Putnam (1904), 90 App. Div. 127, 85 N. Y. Supp. 1056, 18 Crim. Rep. 105; People v. Snyder (1906), 110 App. Div. 699, 97 N. Y. Supp. 469; People v. Colmey (1907), 117 App. Div. 462, 102 N. Y. Supp. 714, 188 N. Y. 573; People ex rel. Perkins v. Moss (1907), 187 N. Y. 410, aff'g 113 App. Div. 329, 99 N. Y. Supp. 138, 20 Crim. Rep. 75; Higgins v. People, 7 Lans. 110; Rhodiban v. People, 5 Park, 395.

§ 1295. Grand larceny in first degree; how punished.

Grand larceny in the first degree is punishable by imprisonment *for* a term not exceeding ten years.

Derivation: *Penal Code, § 533, as amended L. 1892, ch. 662, § 16.*

§ 1296. Grand larceny in second degree.

A person is guilty of grand larceny in the second degree who, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this article, steals or unlawfully obtains or appropriates:

1. Property of the value of more than twenty-five dollars, but not exceeding five hundred dollars, in any manner whatever; or,

2. Property of any value, by taking the same from the person of another; or,

3. A record of a court or officer, or a writing, instrument or record kept filed or deposited according to law, with, or in keeping of any, public office or officer.

Derivation: Penal Code, § 531.

People v. Wiggins (1883), 38 Hun, 418, 4 N. Y. Cr. 1, 92 N. Y. 656; People v. McTameney (1883), 13 Abb. N. C. 56, 65 How. 401, 1 N. Y. Cr. 437; People v. Carr (1885), 3 N. Y. Cr. 578; People v. Reavey (1886), 38 Hun, 418, 4 N. Y. Cr. 1, 39 Hun, 364; People v. McCallam (1886), 103 N. Y. 589; People v. Moran (1890), 123 N. Y. 254, 8 N. Y. Cr. 105, rev'g 54 Hun, 279, 7 N. Y. Supp. 582; People v. Frazier (1901), 36 Misc. 280, 73 N. Y. Supp. 446, 16 Crim. Rep. 227; People v. Stein (1903), 80 App. Div. 357, 80 N. Y. Supp. 847; People v. Mills (1904), 178 N. Y. 274, 18 Crim. Rep. 279, aff'g 91 App. Div. 331, 86 N. Y. Supp. 529, 18 Crim. Rep. 127; People v. Fletcher (1905), 110 App. Div. 231, 97 N. Y. Supp. 62, 19 Crim. Rep. 564; Grathwohl v. N. Y. Central & H. R. R. R. Co. (1906), 116 App. Div. 176, 101 N. Y. Supp. 667; People v. Reiss (1906), 114 App. Div. 431, 99 N. Y. Supp. 1002; People v. Koller (1906), 116 App. Div. 173, 101 N. Y. Supp. 518; People v. Gluck (1907), 188 N. Y. 167; People v. Madden (1907), 120 App. Div. 338; People v. Smilie (1907), 118 App. Div. 611, 103 N. Y. Supp. 348.

§ 1297. Grand larceny in second degree; how punished.

Grand larceny in the second degree is punishable by imprisonment for a term not exceeding five years.

Derivation: Penal Code, § 534, as amended L. 1892, ch. 662, § 17.

People v. Kerns (1896), 7 App. Div. 534, 40 N. Y. Supp. 243; People v. Poucher (1883), 30 Hun, 577, 1 N. Y. Cr. 546.

§ 1298. Petit larceny defined.

Every other larceny is petit larceny.

Derivation: Penal Code, § 532.

Justices, etc., v. People (1882), 90 N. Y. 12, rev'g 26 Hun, 537; People v. White (1883), 1 N. Y. Cr. 466; People v. Smith (1895), 86 Hun, 485, 33 N.

Y. Supp. 989; People v. Stein (1903), 80 App. Div. 357, 80 N. Y. Supp. 847; Matter of Bartholomew (1905), 106 App. Div. 371, 94 N. Y. Supp. 512; People ex rel. Bidwell v. Pitts (1906), 111 App. Div. 319, 97 N. Y. Supp. 509, 19 Crim. Rep. 573.

§ 1299. Petit larceny a misdemeanor.

Petit larceny is a misdemeanor.

Derivation: Penal Code, § 535.

People ex rel. Laughlin v. Finn (1882), 87 N. Y. 534; People v. McTameney (1883), 66 How. Pr. 70, 13 Abb. N. C. 55, 30 Hun, 505; People ex rel. Tully v. Fallon (1902), 73 App. Div. 471, 77 N. Y. Supp. 292; People ex rel. Frank v. Davis (1903), 80 App. Div. 456, 80 N. Y. Supp. 872; Hanlon v. Ehrich (1903), 80 App. Div. 359, 80 N. Y. Supp. 692; People v. Finucan (1903), 80 App. Div. 407, 80 N. Y. Supp. 929, 17 Crim. Rep. 254; People v. Stein (1903), 80 App. Div. 357, 80 N. Y. Supp. 847; Cleveland v. Cromwell (1905), 110 App. Div. 82, 96 N. Y. Supp. 475; People ex rel. Burns v. Flaherty (1906), 119 App. Div. 462, 104 N. Y. Supp. 173, 21 Crim. Rep. 224; People ex rel. Cosgriff v. Craig (1908), 60 Misc. 530; Matter of Hallenbeck, 65 How. Pr. 401, 30 Hun, 505, 1 N. Y. Cr. 437.

§ 1300. Appropriating lost property.

A person, who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made every reasonable effort to find the owner and restore the property to him, is guilty of larceny.

Derivation: Penal Code, § 539.

Com. v. Titus, 116 Mass. 42, 17 Am. Rep. 138, 140, note; People v. Katz, 3 Park, 129; People v. Swan, 1 Park, 9; People v. Cogdell, 1 Hill, 94; Bailey v. State, 52 Ind. 462, 21 Am. Rep. 182, 187; People v. Anderson, 14 Johns. 294.

§ 1301. Bringing stolen goods into state, larceny.

A person, who having, at any place without the state, stolen the property of another, or received such property, knowing it to have been stolen, brings the same into this state, may be convicted and punished in the same manner as if such larceny or receiving had been committed within the state. Complaint may be made and the indictment found and tried, and the offense may be charged to have been committed, in any county into or through which the stolen property is brought.

Derivation: Penal Code, § 540.

Haskins v. People (1857), 16 N. Y. 344; People v. Gardner, 2 Johns. 477;

People v. Burke, 11 Wend. 129; Stanley v. State, 24 Ohio St. 166, 15 Am. Rep. 604; State v. Newman, 9 Nev. 48, 16 Am. Rep. 3; People v. Williams, 24 Mich. 156, 9 Am. Rep. 119.

§ 1302. Conversion of property held in trust or by virtue of office, larceny; how punished.

A person acting as executor, administrator, committee, guardian, receiver, collector or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, who secretes, withholds, or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, goods, thing in action, security, evidence of debt or of property, or other valuable thing, or any proceeds thereof, in his possession or custody by virtue of his office, employment, or appointment, is guilty of grand or petit larceny in such degree as is herein prescribed, with reference to the amount of such property; and upon conviction, in addition to the punishment in this article prescribed for such larceny, may be adjudged to pay a fine, not exceeding the value of the property so misappropriated or stolen, with interest thereon from the time of the misappropriation, withholding, or concealment, and twenty per centum thereupon, in addition, and to be imprisoned for not more than five years in addition to the term of his sentence for larceny, according to this article, unless the fine is sooner paid.

So much of the fine authorized in this section to be imposed, as does not exceed the amount or value of the property taken, appropriated, or stolen, with interest thereupon from the time of the commission of the offense, and a reasonable sum to defray the expense of collecting the same, to be fixed by the supreme court, must, when received or collected, be paid to the county treasurer of the county where the conviction was had, for the benefit of the person injured or defrauded, or whose property the offender took, misappropriated, or concealed, or his representative or assignee; and must be paid over to him by the county treasurer, upon the order of the supreme court, made after notice to the district attorney of the county.

In case of the payment of the value of the property stolen or taken, with interest, by the person convicted, or of the collection of the same by civil action, the court may, in its discretion, upon the application by such person, and such notice to other persons

interested, and to the district attorney of the county, as the court may direct, remit the fine imposed, pursuant to this section, except the additional allowance for expenses.

Derivation: Penal Code, §§ 541-543.

Bartow v. People (1879), 78 N. Y. 377, rev'g 18 Hun, 22; People v. Weinseimer (1907), 117 App. Div. 620, 102 N. Y. Supp. 579; Matter of Bushnell, 4 N. Y. Supp. 480, 17 N. Y. St. 827; Thatcher v. Hope, etc., Ass'n (1891), 126 N. Y. 511.

§ 1303. Value of stolen evidence of debt, how ascertained.

If the thing stolen consists of a written instrument, being an evidence of debt, other than a public or corporate certificate, scrip, bond, or security having a market value, or being the transfer of or evidence of title to any property, or of the creating, releasing, or discharging, of any demand, right, or obligation, the amount of money due thereupon or secured to be paid thereby, and remaining unsatisfied, or which, in any contingency, might be collected thereupon or thereby, or the value of the property transferred or affected, or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be, is deemed the value of the thing stolen.

Derivation: Penal Code, § 545.

People v. Hall (1893), 74 Hun, 96, 26 N. Y. Supp. 403; People v. Peckens (1897), 153 N. Y. 577, aff'g 12 App. Div. 626, 43 N. Y. Supp. 1160; People v. Fletcher (1905), 110 App. Div. 231, 97 N. Y. Supp. 62; People v. Fallon, 6 Park, 256; Johnson v. People, 4 Den. 364.

§ 1304. Value of stolen passage ticket, how ascertained.

If the thing stolen is a ticket, paper or other writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon a railway car, vessel, or other public conveyance, the price at which a ticket, entitling a person to a like passage, is usually sold, is deemed the value thereof.

Derivation: Penal Code, § 546.

§ 1305. Value of other stolen articles, how ascertained.

In every case not otherwise regulated by statute, the market value of the thing stolen is deemed its value.

Derivation: Penal Code, § 547.

§ 1306. Claim of title a ground of defense.

Upon an indictment for larceny it is a sufficient defense that the property was appropriated openly and avowedly, under a claim of title preferred in good faith, even though such claim is untenable. But this section shall not excuse the retention of the property of another, to offset or pay demands held against him.

Derivation: Penal Code, § 548.

People v. Burton (1883), 1 N. Y. Cr. 297; People v. Grim (1885), 3 N. Y. Cr. 317; People ex rel. Perkins v. Moss (1906), 113 App. Div. 333, 99 N. Y. Supp. 138, 20 Crim. Rep. 75, aff'd (1907), 187 N. Y. 410; People v. Burnham (1907), 119 App. Div. 302, 104 N. Y. Supp. 725; Matthews & Co. v. Employers' Liability Assur. Corp. (1908), 127 App. Div. 196; People v. Ouley, 7 N. Y. St. 794; People v. Thomas, 3 Hill. 169; People v. Smith, 5 Park, 490; Cansey v. State, 79 Ga. 564, 11 Am. St. Rep. 447; Graves v. State, 25 Tex. App. 333; Meade v. State, 25 Nebr. 444.

§ 1307. Intent to restore property no defense.

The fact that the defendant intended to restore the property stolen or embezzled, is no ground of defense, or of mitigation of punishment, if it has not been restored before complaint to a magistrate, charging the commission of the crime.

Derivation: Penal Code, § 549.

Parr v. Loder (1904), 97 App. Div. 218, 89 N. Y. Supp. 823.

§ 1308. Buying or receiving stolen or wrongfully acquired property.

A person, who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny according to this article, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, or promise or agreement for the same, conceals, withholds, or aids in concealing or withholding any property, knowing the same to have been stolen, or appropriated wrongfully in such a manner as to constitute larceny under the provisions of this article, if such misappropriation has been committed within the state, whether such property were so stolen or misappropriated within or without the state, or who being a dealer in or collector of junk, metals or second hand materials, or the agents, employee or representative of such dealer or collector, buys or receives any wire, cable, copper, lead, solder, iron or brass used by or belonging to a railroad, telephone, telegraph, gas or

electric light company without ascertaining by diligent inquiry, that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving such property, and is punishable, by imprisonment in a state prison for not more than five years, or in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 550, as amended L. 1903, ch. 326, § 1.

Coleman v. People (1873), 55 N. Y. 82, rev'g 1 T. & C. Add. 3; Copperman v. People (1874), 56 N. Y. 591, aff'g 1 Hun, 15, 3 Th. & C. 199; Goldstein v. People (1880), 82 N. Y. 231; Miller v. People (1881), 25 Hun, 473; People v. Dowling (1881), 84 N. Y. 479; People v. Weldon (1888), 111 N. Y. 569; People v. Brien (1889), 53 Hun, 496, 6 N. Y. Supp. 198, 7 N. Y. Cr. 166; People v. Connor (1893), 68 Hun, 78, 22 N. Y. Supp. 669, aff'd 141 N. Y. 583; People v. McClure (1895), 148 N. Y. 95, rev'g 88 Hun, 505, 34 N. Y. Supp. 974; People v. Schooley (1896), 149 N. Y. 99, 12 N. Y. Cr. 20, aff'g 89 Hun, 391, 35 N. Y. Supp. 429; People v. Wilson (1896), 151 N. Y. 403, 12 N. Y. Cr. 116, aff'g 7 App. Div. 326, 40 N. Y. Supp. 107; People v. Flechter (1899), 44 App. Div. 199, 60 N. Y. Supp. 777; People v. Rivello (1899), 39 App. Div. 454, 57 N. Y. Supp. 420; People v. Grossman (1901), 168 N. Y. 47, aff'g 59 App. Div. 626, 69 N. Y. Supp. 1141; People v. Hartwell (1901), 166 N. Y. 361, rev'g 55 App. Div. 234, 67 N. Y. Supp. 25; People v. Molineux (1901), 168 N. Y. 297; People v. Weisenberger (1902), 73 App. Div. 428, 77 N. Y. Supp. 71; People v. Ammon (1904), 92 App. Div. 205, 87 N. Y. Supp. 358; People v. Breen (1905), 181 N. Y. 493, 19 Crim. Rep. 393; People v. Fletcher (1905), 110 App. Div. 231, 97 N. Y. Supp. 62; People ex rel. Ammon v. Johnson (1906), 114 App. Div. 877, 100 N. Y. Supp. 256, 20 Crim. Rep. 374; People v. Jaffe (1906), 185 N. Y. 497, 19 Crim. Rep. 289, rev'g 112 App. Div. 516, 98 N. Y. Supp. 486; People v. Wiley, 3 Hill, 194; Wells v. People, 3 Park, 473; Chatterton v. People, 15 Abb. 147; Cohen v. People, 5 Park, 330; Hopkins v. People, 12 Wend. 76; People v. Caswell, 21 Wend. 86; Shotwell's Case, 3 C. H. Rec. 95; People v. Peirpont, 1 Wheel. Cr. Cas. 139; McNiff's Case, 1 C. H. Rec. 8; Bell's Case, 6 C. H. Rec. 96; People v. Greene, 1 Wheel. Cr. Cas. 152; Wills v. People, 3 Park, 473; Gaither v. State, 8 Crim. L. Mag. 754; People v. Stein, 1 Parl, 202; Com. v. Sullivan, 136 Mass. 170; State v. Ward, 49 Conn. 429; Com. v. Johnson, 12 Crim. L. Mag. 641; State v. Ward, 49 Conn. 429.

§ 1309. Averment and proof of conviction of principal not necessary.

It is not necessary to aver, in an indictment for an offense specified in the last section, nor to prove upon the trial thereof, that the principal who stole the property has been convicted, or is amenable to justice.

Derivation: Penal Code, § 551.

People v. Brien (1889), 53 Hun, 496, 6 N. Y. Supp. 198, 7 N. Y. Cr. 166.

§ 1310. Conversion of materials furnished to a person for purpose of being manufactured.

Any person who shall wilfully pawn, pledge, sell or convert to his or her own use any material furnished to him or her for the purpose of being manufactured, if the same be of the value of more than twenty-five dollars, shall, upon conviction thereof, be adjudged guilty of grand larceny, and imprisoned in a state prison for a term not exceeding five years, but if the same be of the value of twenty-five dollars or under, he or she shall, upon conviction, be adjudged guilty of petit larceny, and be punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment.

Nothing in this section contained shall be deemed or held to discharge any mechanic's lien, or right of lien in favor of any employee as now recognized by law.

Derivation: L. 1881, ch. 419, §§ 1, 2.

ARTICLE 124.

LEGISLATURE.

SECTION 1320. Preventing the meeting or organization of either branch of the legislature.
1321. Disturbing the legislature while in session.
1322. Compelling adjournment.
1323. Intimidating a member of the legislature.
1324. Compelling either house to perform or omit any official act.
1325. Altering draft of bill.
1326. Altering engrossed copy.
1327. Bribery of members of the legislature.
1328. Receiving bribes by members of legislature.
1329. Witnesses refusing to attend before the legislature or legislative committees.
1330. Refusing to testify.
1331. Members of the legislature liable to forfeiture of office.

§ 1320. Preventing the meeting or organization of either branch of the legislature.

A person who wilfully and by force or fraud prevents the legislature of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in a state prison not less than five years nor more than ten years, or by a fine of not less than five hundred dollars, nor more than two thousand dollars, or by both.

Derivation: Penal Code, § 59.

§ 1321. Disturbing the legislature while in session.

A person who wilfully disturbs the legislature of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

Derivation: Penal Code, § 60.

§ 1322. Compelling adjournment.

A person who willfully and by force or fraud compels or attempts to compel the legislature of this state, or either of the

houses composing it, to adjourn or disperse, is punishable by imprisonment in a state prison not less than five nor more than ten years, or by fine of not less than five hundred dollars, nor more than two thousand dollars, or by both.

Derivation: Penal Code, § 61.

§ 1323. Intimidating a member of the legislature.

A person who wilfully, by intimidation or otherwise, prevents any member of the legislature of this state, from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor.

Derivation: Penal Code, § 62.

§ 1324. Compelling either house to perform or omit any official act.

A person who wilfully compels or attempts to compel either of the houses composing the legislature of this state to pass, amend, or reject any bill, or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is punishable by imprisonment in a state prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both.

Derivation: Penal Code, § 63.

§ 1325. Altering draft of bill.

A person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

Derivation: Penal Code, § 64.

People ex rel. Burns v. Flaherty (1907), 119 App. Div. 463, 104 N. Y. Supp. 173.

§ 1326. Altering engrossed copy.

A person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislature of this

state, with intent to procure it to be approved by the governor or certified by the secretary of state, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislature, is guilty of felony.

Derivation: Penal Code, § 65.

§ 1327. Bribery of members of the legislature.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement thereof, to a member of the legislature, or attempts, directly or indirectly, by menace, deceit, suppression of truth, or other corrupt means, to influence a member to give or withhold his vote, or to absent himself from the house of which he is a member, or from any committee thereof, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Derivation: Penal Code, § 66.

People v. Sharp (1887), 107 N. Y. 427, 1 Am. St. Rep. 851, 5 N. Y. Cr. 572, rev'g 45 Hun, 460; State v. Ellis, 33 N. Y. L. 102; Sulston v. Norton, 3 Burr, 1235.

§ 1328. Receiving bribes by members of legislature.

A member of either of the houses composing the legislature of this state, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives or offers or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

Derivation: Penal Code, § 67.

Hunt v. Test, 8 Ala. 719; Walsh v. People, 68 Ill. 58; Com. v. Callahan, 2 Va. Cas. 460; Fuller v. Dame, 18 Pick. 470; Marshall v. Balt. & O. R. Co., 16 How. (U. S.) 314; Wood v. McCarr, 6 Dana, 366; Hatsfield v. Guldsen, 7 Watts, 152.

§ 1329. Witnesses refusing to attend before the legislature or legislative committees.

A person who, being duly summoned to attend as a witness before either house of the legislature or any committee thereof, authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

Derivation: Penal Code, § 68.

People ex rel. McDonald v. Keeler (1885), 99 N. Y. 463, rev'g 32 Hun, 563, 3 N. Y. Cr. 353; see also Matter of Dalton, 7 Crim. L. Mag. 601, 607, note.

§ 1330. Refusing to testify.

A person who being present before either house of the legislature or any committee thereof authorized to summon witnesses, wilfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

Derivation: Penal Code, § 69.

People v. Learned (1875), 5 Hun, 626; People ex rel. McDonald v. Keeler (1885), 99 N. Y. 463, 3 N. Y. Cr. 353, 32 Hun, 589; People v. Sharp (1887), 107 N. Y. 427, rev'g 45 Hun, 460; see also People ex rel. Sabold v. Webb, 5 N. Y. Supp. 855.

§ 1331. Members of the legislature liable to forfeiture of office.

The conviction of a member of the legislature of either of the crimes defined in this article, involves as a consequence in addition to the punishment prescribed by this chapter, a forfeiture of his office; and disqualifies him from ever afterwards holding any office under this state.

Derivation: Penal Code, § 70.

ARTICLE 126.

*LIBEL.

SECTION 1340. Libel defined.
1341. Libel a misdemeanor.
1342. Malice presumed; defense to prosecution.
1343. Publication defined.
1344. Liability of editors and others.
1345. Publishing a true report of public official proceedings.
1346. Indictment for libel published against resident.
1347. Indictment for libel against nonresident.
1348. Restriction on indictment for libel.
1349. Power of court; place of trial.
1350. Privileged communications.
1351. Threatening to publish libel.
1352. Furnishing libelous information.

§ 1340. Libel defined.

A malicious publication, by writing, printing, picture, effigy, sign or otherwise than by mere speech, which exposes any living person, or the memory of any person deceased, to hatred, contempt, ridicule or obloquy, or which causes, or tends to cause any person to be shunned or avoided, or which has a tendency to injure any person, corporation or association of persons, in his or their business or occupation, is a libel.

Derivation: Penal Code, § 242.

Sanderson v. Caldwell (1871), 45 N. Y. 398; More v. Bennett (1872), 48 N. Y. 472, rev'g 48 Barb. 229, 33 How. Pr. 177; Moffatt v. Cauldwell (1874), 3 Hun, 26; People v. Isaacs (1883), 1 N. Y. Cr. 148; Bergmann v. Jones (1883), 94 N. Y. 52; Shelby v. Sun Printing Co. (1886), 38 Hun, 474, 109 N. Y. 611; People v. Parr (1886), 5 N. Y. Cr. 34, 42 Hun, 316; Moore v. Francis (1890), 121 N. Y. 199, 8 L. R. A. 214; Morey v. Morning Journal Assn. (1890), 123 N. Y. 207; People v. Stark (1891), 59 Hun, 51, 12 N. Y. Supp. 688, aff'd 136 N. Y. 538; Shea v. Sun, etc. (1895), 14 Misc. 415, 35 N. Y. Supp. 703; Gray v. Sampers (1898), 35 App. Div. 270, 55 N. Y. Supp. 3; Gray v. Brooklyn, etc. (1898), 35 App. Div. 286, 55 N. Y. Supp. 35; McFadden v. Morning Jour. Assn. (1898), 28 App. Div. 508, 51 N. Y. Supp. 275; Gates v. New York Recorder Co. (1898), 155 N. Y. 228; Gallagher v. Bryant (1899), 44 App. Div. 527, 60 N. Y. Supp. 844; People v. McLaughlin (1901), 33 Misc. 691, 68 N. Y. Supp. 1108; Roberson v. Rochester, etc. (1902), 171 N. Y. 556, rev'g 64 App. Div. 30, 71 N. Y. Supp. 876; Gibson v. Sun Printing Co. (1902), 71 App. Div. 566, 76 N. Y. Supp. 197; Bornman v. Star Co. (1903), 174 N. Y. 220; People ex rel. Gow v. Bingham (1907), 57 Misc. 66,

* Fiero on Torts, Chapter 15, is a complete treatise on the New York Law *of Libel* and Slander.

107 N. Y. Supp. 1011, 21 N. Y. Cr. 568; see also Biggs v. Denniston, 3 Johns. C. Cas. 198; Carpenter v. Hammond, 1 N. Y. St. 551; Carroll v. White, 33 Barb. 615; Clark v. Anderson, 1 N. Y. Supp. 730; Cramer v. Wiggs, 17 Wend. 209; Cooper v. Greeley, 1 Den. 347, 358; Dwyer v. Fireman's Journal Co., 11 Daly, 248; Edsall v. Brooks, 26 How Pr. 426, 2 Robt. 29, 17 Abb. Pr. 221; Fidler v. Delavan, 20 Wend. 51; Perkins v. Mitchell, 31 Barb. 465; Powers v. Dubois, 17 Wend. 63; Robertson v. Bennett, 44 N. Y. Supp. 66; Ryckman v. Delavan, 25 Wend. 186; Ryer v. Fireman's Journal Co., 11 Daly, 251; Stilwell v. Barter, 19 Wend. 487; Southwick v. Stevens, 10 Johns. 443; Taylor v. Church, 1 E. D. Smith, 279; Thomas v. Croswell, 7 Johns. 264; Turrell v. Dolloway, 17 Wend. 426; Weed v. Foster, 11 Barb. 203; White v. Delavan, 17 Wend. 49; Williams v. Godkin, 5 Daly, 499; Wright v. Paige, 36 Barb. 438, aff'd 3 Trans. App. 134; Giles v. State, 6 Ga. 276; Hetherington v. Sterry, 28 Kans. 426, 42 Am. Rep. 169; Steketee v. Kimm, 48 Mich. 322; Smith v. Smith, 73 Mich. 445, 16 Am. St. Rep. 594, 8 L. R. A. 52; Peet & Morgan v. Kennedy, 62 Minn. 284, 30 L. R. A. 521; State v. Smiley, 37 Ohio St. 30, 41 Am. Rep. 487; O'Brien v. Times Pub. Co., 21 R. I. 256; Bradley v. Cramer, 59 Wis. 309, 48 Am. Rep. 513; Rich v. Parrott, 1 Cliff. 55; Reg. v. Adams, 22 Q. B. Div. 66.

§ 1341. Libel a misdemeanor.

A person who publishes a libel, is guilty of a misdemeanor.

Derivation: Penal Code, § 243.

Hunt v. Bennett (1859), 19 N. Y. 176; Hamilton v. Eno (1880), 81 N. Y. 122, aff'g 16 Hun, 599; Brooks v. Harrison (1883), 91 N. Y. 89; People v. Parr (1886), 4 N. Y. Cr. 545; Ryan v. Collins (1888), 111 N. Y. 150, rev'g 39 Hun, 204; People v. Sherlock (1901), 166 N. Y. 180, 15 N. Y. Cr. 412, aff'd 56 App. Div. 422, 68 N. Y. Supp. 74; see also Baldwin's Case, 3 C. H. Rec. 61; Bartholomy v. People, 2 Hill, 248; Cooper v. Barber, 24 Wend. 105; Daly v. Byrne, 1 Abb. N. C. 150; Dole v. Lyon, 10 Johns. 447; Fidler v. Delavan, 20 Wend. 57; Hotchkiss v. Oliphant, 2 Hill, 510; Powers v. Skinner, 1 Wend. 451; Rice v. Withers, 9 Wend. 138; Spencer v. Southwick, 11 Johns. 592; Root v. King, 7 Cow. 613, 4 Wend. 113; Skinner v. Powers, 1 Wend. 451; Snyder v. Andrews, 6 Barb. 43; Stillwell v. Barter, 19 Wend. 487; Thorn v. Blanchard, 5 Johns. 508; People v. Tracy, 2 Wheel. Car. Cas. 358; Washburn v. Cook, 3 Den. 110.

§ 1342. Malice presumed; defense to prosecution.

A publication having the tendency or effect, mentioned in section thirteen hundred and forty, is to be deemed malicious, if no justification or excuse therefor is shown.

The publication is justified when the matter charged as libelous is true, and was published with good motives and for justifiable ends.

The publication is excused when it is honestly made, in the belief of its truth and upon reasonable grounds for this belief, and consists of fair comments upon the conduct of a person in respect of public affairs, or upon a thing which the proprietor thereof offers or explain to the public.

Derivation: Penal Code, § 244.

People ex rel. Gow v. Bingham (1907), 57 Misc. 66, 107 N. Y. Supp. 1011, 21 N. Y. Cr. 568.

§ 1343. Publication defined.

To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by another person than himself.

Derivation: Penal Code, § 245

Woods v. Wiman (1888), 47 Hun, 362, rev'd 122 N. Y. 445; Robertson v. Rochester Folding Box Co. (1902), 171 N. Y. 538; People ex rel. Gow v. Bingham (1907), 57 Misc. 66, 107 N. Y. Supp. 1011, 21 N. Y. Cr. 568; Lyle v. Clason, 1 Caines, 581; Prescott v. Tousey, 50 N. Y. Super. 12; Snyder v. Andrews, 6 Barb. 47; Trumbull v. Gibbons, 3 C. H. Rec. 97; Van Cleef v. Lawrence, 6 C. H. Rec. 41; Sesler v. Montgomery, 78 Cal. 486, 12 Am. St. Rep. 76, 28 Am. L. Reg. (N. S.) 271, note; Schenck v. Schenck, 20 N. J. L. 208; Warnock v. Mitchell, 43 Fed. 428, 42 Alb. L. J. 409; Barrow v. Lewellin, Hob. 62a; Wenman v. Ash, 13 C. B. 836, 22 Eng. Law & Eq. 509; Wennhak v. Morgan, 20 Q. B. Div. 635, 38 Eng. Rep. 682.

§ 1344. Liability of editors and others.

Every editor, or proprietor of a book, newspaper or serial, and every manager of a partnership or incorporated association, by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication and whose act was disavowed by him so soon as known.

Derivation: Penal Code, § 246.

Hunt v. Bennett (1859), 19 N. Y. 175; Fry v. Bennett (1863), 28 N. Y. 324, aff'g 3 Bosw. 200, 9 Abb. 45; Sunderlin v. Bradstreet (1871), 46 N. Y. 188; Purdy v. Rochester Printing Co. (1884), 96 N. Y. 372, rev'g 26 Hun,

206; Shelby v. Sun Printing Assn. (1886), 38 Hun, 474, 109 N. Y. 611; see also Andress v. Wells, 7 Johns. 260; Hutff v. Bennett, 4 Sandf. 120; Ropke v. Brooklyn Daily Eagle, 9 N. Y. St. 709; Thomas v. Croswell, 7 Johns. 264; Press Co. v. Stewart, 119 Pa. St. 584; Bruce v. Reed, 104 Pa. St. 408, 49 Am. Rep. 586.

§ 1345. Publishing a true report of public official proceedings.

A prosecution for libel can not be maintained against a reporter, editor, publisher, or proprietor of a newspaper, for the publication therein, of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report.

This section does not apply to a libel contained in the heading of the report, or in any other matter added by any other person concerned in the publication; or in the report of any thing said or done at the time and place of the public and official proceeding, which was not a part thereof.

Derivation: Penal Code, §§ 247-248.

Sanford v. Bennett (1861), 24 N. Y. 20; see also Ackerman v. Jones, 37 N. Y. Super. 42; Edsall v. Brooks, 2 Robt. 29; McCabe v. Cauldwell, 18 Abb. Pr. 377; Stanley v. Webb, 4 Sandf. 221; Steele v. Southwick, 9 Johns. 214; Thomas v. Croswell, 7 Johns. 264.

§ 1346. Indictment for libel published against resident.

An indictment for a libel, contained in a newspaper published within this state, against a resident thereof, may be found either in the county where the paper was published, or in the county where the person libeled resided when the offense was committed. In the latter case the defendant is entitled to an order of the supreme court, directing the indictment against him to be tried in the county in which the paper was printed and published, upon compliance with the following conditions:

1. He must apply for the order within thirty days after being committed upon, or giving bail to answer, the indictment;

2. He must execute a bond to the complainant, with two sufficient sureties, approved by the judge hearing his application, in a penal sum fixed by the judge, not less than two hundred and fifty nor more than one thousand dollars, conditioned for the payment, in case the defendant is convicted, of all the complainant's reason-

able expenses in going to and from his place of residence and the place of trial, and in attendance upon the trial;

3. He must, within ten days after the granting of the order, file the order and deposit the bond with the clerk of the county in which the indictment is pending.

Derivation: Penal Code, § 249.

§ **1347. Indictment for libel published against nonresident.**

An indictment for a libel published against a person not a resident of this state, must be found and tried in the county, where the paper containing the libel purports upon its face to be published; or, if no county is indicated upon the face of the paper, in any county where the paper was circulated.

Derivation: Penal Code, § 250.

Trumbull v. Gibbons, 3 C. H. Rec. 397.

§ **1348. Restriction on indictment for libel.**

A person cannot be indicted or tried for the publication of the same libel against the same person, in more than one county.

Derivation: Penal Code, § 251.

§ **1349. Power of court; place of trial.**

Nothing contained in this article shall be construed to abridge, or in any manner affect, the power of a competent court, to change the place of trial of an indictment for libel, in the same manner as may lawfully be done, in respect to any other indictment.

Derivation: Penal Code, § 252.

§ **1350. Privileged communications.**

A communication made to a person entitled to, or interested in, the communication, by one who was also interested in or entitled to make it, or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, is presumed not to be malicious, and is called a privileged communication.

Derivation: Penal Code, § 253.

Garr v. Selden (1850), 4 N. Y. 91; Taylor v. Church (1853), 8 N. Y. 452, 1 E. D. Smith, 279; Lewis v. Chapman (1857), 16 N. Y. 369; Van Wyck v. Aspinwall (1858), 17 N. Y. 190; Hunt v. Bennett (1859), 19 N. Y. 173, 4 E. D. Smith, 647; Sanford v. Bennett (1861), 24 N. Y. 20; Klinck v. Colby (1871), 46 N. Y. 427; Sunderlin v. Bradstreet (1871), 46 N. Y. 191; Marsh v.

Ellsworth (1872), 50 N. Y. 309, 1 Sweeney, 52, 36 How. 532, 2 Sweeney, 589; Hamilton v. Eno (1880), 81 N. Y. 116, aff'g 16 Hun, 599; Halstead v. Nelson (1881), 24 Hun, 395; Byam v. Collins (1888), 111 N. Y. 150, rev'g 39 Hun, 204; Lovel Co. v. Houghton (1889), 116 N. Y. 520, aff'g 54 N. Y. Super. 60; Woods v. Wyman (1890), 122 N. Y. 445, rev'g 47 Hun, 364; People v. Sherlock (1901), 166 N. Y. 187, 15 N. Y. Cr. 412, aff'g 56 App. Div. 422, 68 N. Y. Supp. 74; see also Ackerman v. Jones, 5 J. & Sp. 42; Cooper v. Stone, 24 Wend. 434; Edsall v. Brooks, 17 Abb. Pr. 221; Fry v. Bennett, 5 Sandf. 54, 9 N. Y. Leg. Obs. 330; Gilbert v. People, 1 Den. 41; Hosmer v. Loveland, 19 Barb. 111; Kelly v. Taintor, 48 How. Pr. 270; Lewis v. Few, 5 Johns. 1; Littlejohn v. Greeley, 13 Abb. 41; McCabe v. Cauldwell, 18 Abb. Pr. 377; Newfield v. Copperman, 47 How. Pr. 87, 15 Abb. Pr. (N. S.) 360; Perkins v. Mitchell, 31 Barb. 461; Reed v. Sweetzer, 6 Abb. (N. S.) 9; Root v. King, 7 Cow. 613, aff'd 4 Wend. 113; Stanley v. Webb, 4 Sandf. 21, 8 N. Y. Leg. Obs. 209; Streety v. Wood, 15 Barb. 105; People v. Stokes, 30 Abb. N. C. 200; Thorn v. Blanchard, 5 Johns. 508; Vanderzee v. McGregor, 12 Wend. 545; Washburn v. Cook, 3 Den. 110; Com. v. Clapp, 4 Mass. 163; Benton v. State, 59 N. J. L. 560; Seely v. Blair, Wright (Ohio), 358, 683; Briggs v. Garrett, 111 Pa. St. 404, 33 Alb. L. J. 211, 56 Am. Rep. 274; Brewer v. Weakley, 2 Overton (Tenn.), 99; Curtis v. Mussey, 6 Gray, 261; Mayrant v. Richardson, 1 N. & McC. (S. Car.), 347; Hallam v. Post Publishing Co., 55 Fed. 456; Fry v. Bennett, 8 Bosw. 200; Williamson v. Frear, L. R. 9 Com. Pl. 393, 10 Eng. Rep. 225.

§ 1351. Threatening to publish libel.

A person who threatens another with the publication of a libel, concerning the latter or concerning any parent, husband, wife, child or other member of the family of the latter, and a person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort, money or other valuable consideration from any person, is guilty of a misdemeanor.

Derivation: Penal Code, § 254.

§ 1352. Furnishing libelous information.

Any person who wilfully states, delivers or transmits by any means whatever to any manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation, which, if published therein, would be a libel, is guilty of a misdemeanor.

Derivation: Penal Code, § 254a, added L. 1890, ch. 340, § 1, and amended L. 1894, ch. 626, § 1.

Schoepflin v. Coffey (1900), 162 N. Y. 12, rev'g 25 App. Div. 438, 49 N. Y. Supp. 627; People v. Sherlock (1901), 166 N. Y. 187, 15 N. Y. Cr. 412, aff'g 56 App. Div. 422, 68 N. Y. Supp. 74.

ARTICLE 128.

LOGS.

SECTION 1360. Floating logs or defacing marks thereon.

§ 1360. Floating logs or defacing marks thereon.

A person who:

1. Floats, runs or assists in floating or running any lumber, logs or other timber upon or over any river not excepted by law, within this state, recognized by law or use as a public highway for the purpose of floating and running lumber, logs and other timber therein, without first filing the bond executed and approved as required by law; or,

2. Unlawfully cuts out, alters or defaces any mark made upon any log or lumber, whether such mark be recorded or not, or puts a false mark upon any log or lumber floating in any of the waters of this state or lying upon land,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 373, as amended L. 1893, ch. 692, § 1.

ARTICLE 130.

LOTTERIES.

SECTION 1370. Lottery defined.
1371. Lottery unlawful and a public nuisance.
1372. Contriving, drawing, and assisting in a lottery.
1373. Selling lottery tickets.
1374. Advertising lotteries.
1375. Advertisements by persons out of the state.
1376. Offering property for disposal dependent upon the drawing of any lottery.
1377. Keeping a lottery office.
1378. Insuring lottery tickets.
1379. Advertising to insure lottery tickets.
1380. Property offered for disposal in lotteries, forfeited.
1381. Letting building for lottery purposes.
1382. Lotteries out of this state.
1383. Money paid for lottery tickets may be recovered by action.
1384. Prizes in lotteries, forfeited.
1385. Certain transfers of property in pursuance of lottery, void.
1386. Contracts, agreements and securities on account of raffling, void.

§ 1370. Lottery defined.

A "lottery" is a scheme for the distribution of property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance, whether called a lottery, raffle, or gift enterprise or by some other name.

Derivation: Penal Code, § 323.

Hull v. Ruggles (1874), 56 N. Y. 424, aff'g 1 Th. &c. 18, 65 Barb. 432; Grover v. Morris (1878), 73 N. Y. 473; Wilkinson v. Gill (1878), 74 N. Y. 66, 30 Am. Rep. 264, aff'g 10 Hun, 156; People v. Noelke (1883), 94 N. Y. 137, 46 Am. Rep. 128; Kohn v. Koehler (1884), 96 N. Y. 362, 48 Am. Rep. 628, rev'g 21 Hun, 466; People v. Runge (1885), 3 N. Y. Cr. 85; Reilly v. Gray (1894), 77 Hun, 402, 28 N. Y. Supp. 811; People v. Wolff (1897), 14 App. Div. 73, 43 N. Y. Supp. 421, 12 N.Y. Cr. 80; People ex rel. Lawrence v. Fallon (1897), 152 N. Y. 12, 12 N. Y. Cr. 107, aff'g 4 App. Div. 82, 39 N. Y. Supp. 865; People ex rel. Ellison v. Lavin (1904), 179 N. Y. 164, 18 N. Y. Cr. 485, rev'g 93 App. Div. 292, 87 N. Y. Supp. 776; Matter of Cullinan (1906), 114 App. Div. 654, 99 N. Y. Supp. 1099, 20 N. Y. Cr. 327; see also Almy v. McKinney, 5 N. Y. St. 267; Negley v. Devlin, 12 Abb. Pr. (N. S.) 210; Kellowstone Kit. v. State, 88 Ala. 196, 16 Am. Rep. 38, 41 Alb. L. J. 392; Matter of Shobert, 70 Cal.

632, 59 Am. Rep. 432; Ballock v. State, 73 Md. 1, 8 L. R. A. 671; Com. v. Wright, 137 Mass. 250, 50 Am. Rep. 306; People v. Elliott, 74 Mich. 264, 16 Am. St. Rep. 640, 3 L. R. A. 403, note; People v. Reilly, 50 Mich. 384; 45 Am. Rep. 47; State v. Munford, 73 Mo. 647, 39 Am. Rep. 532; State v. Shorts, 32 N. J. L. 398, 90 Am. Dec. 668; Holoman v. State, 2 Tex. Ct. App. 610, 8 Am. Rep. 439; Horner v. United States, 147 U. S. 449.

§ 1371. Lottery unlawful and a public nuisance.

A lottery is unlawful and a public nuisance.

Derivation: Penal Code, § 324.

People v. Gillson (1888), 109 N. Y. 404; Goodrich v. Houghton (1892), 134 N. Y. 115, aff'g 55 Hun, 526, 9 N. Y. Supp. 214; see also Moore v. State, 48 Miss. 147, 12 Am. Rep. 367; Matter of Blanchard, 9 Nev. 101; Stone v. State, 101 U. S. 814; New Orleans v. Houston, 119 U. S. 265.

§ 1372. Contriving, drawing, and assisting in a lottery.

A person who contrives, proposes or draws a lottery, or assists in contriving, proposing or drawing the same, is punishable by imprisonment for not more than two years, or by fine of not more than one thousand dollars, or both.

Derivation: Penal Code, § 325.

Matter of Dwyer (1894), 14 Misc. 204, 35 N. Y. Supp. 884; People v Pickert (1904), 96 App. Div. 637, 89 N. Y. Supp. 183.

§ 1373. Selling lottery tickets.

A person who sells, gives, or in any way whatever furnishes or transfers, to or for another, a ticket, chance, share, or interest, or any paper, certificate, or instrument, purporting to be or to represent a ticket, chance, share, or interest, in or dependent upon the event of a lottery, to be drawn within or without this state, is guilty of a misdemeanor.

Derivation: Penal Code, § 326.

Pickett v. People (1876), 8 Hun, 83, aff'd 67 N. Y. 609; People v. Noelke (1883), 94 N. Y. 137, 46 Am. Rep. 218; People v. Hooghkerk (1884), 96 N. Y. 149, 67 How. Pr. 264; People v. Emerson (1888), 6 N. Y. Cr. 157, 5 N. Y. Supp. 374; Goodrich v. Houghton (1892), 134 N. Y. 115, aff'g 55 Hun, 526, 9 N. Y. Supp. 214; Matter of Blum (1894), 9 Misc. 571, 30 N. Y. Supp. 396; People v. Jones (1895), 89 Hun, 12, 35 N. Y. Supp. 61; see also State v. Moore, 64 N. H. 9, 56 Am. Rep. 478; Com. v. Bierman, 13 Bush. 345.

§ 1374. Advertising lotteries.

A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an account of a lottery, whether within or without the state, stating how, when or where the same is to be, or has been, drawn, or what are the prizes therein, or any of them, or the price of a ticket, or any share or interest therein, or where or how it may be obtained, is guilty of a misdemeanor.

Derivation: Penal Code, § 327.

Ormes v. Dauchy (1880), 82 N. Y. 443, 37 Am. Rep. 583, aff'd 45 N. Y. Super. 85; Hart v. People (1882), 26 Hun, 396; People v. England (1882), 27 Hun, 139; People ex rel. Ellison v. Lavin (1904), 179 N. Y. 164, rev'g 93 App. Div. 292, 87 N. Y. Supp. 776; Matter of Cullinan (1906), 114 App. Div. 658, 99 N. Y. Supp. 1097; see also People v. Charles, 3 Den. 212, 1 N. Y. 180; Hudelson v. State, 94 Ind. 426, 48 Am. Rep. 171; State v. Kaub, 15 Mo. App. 433; Public Clearing House v. Coyne, 94 U. S. 497.

§ 1375. Advertisements by persons out of the state.

The provisions of sections thirteen hundred and seventy-four and thirteen hundred and seventy-nine are applicable, whenever the advertisement was published, or the letter or circular sent or delivered through or in this state, though the person causing or procuring the same to be published, sent or delivered, was out of the state at the time of so doing.

Derivation: Penal Code, § 335.

People ex rel. Madden v. Dycker (1902), 72 App. Div. 308-313, 76 N. Y. Supp. 111.

§ 1376. Offering property for disposal dependent upon the drawing of any lottery.

A person who offers for sale or distribution, in any way, real or personal property, or any interest therein, to be determined by lot or chance, dependent upon the drawing of a lottery within or without this state, or who sells, furnishes, or procures, or causes to be sold, furnished, or procured, in any manner, a chance or share, or any interest in property offered for sale or distribution, in violation of this article, or a ticket or other evidence of such a chance, share, or interest, is guilty of a misdemeanor.

Derivation: Penal Code, § 328.
People v. Pickert, 89 N. Y. Supp. 184.

§ 1377. Keeping a lottery office.

A person who opens, sets up, or keeps, by himself or another person, an office or other place for registering the numbers of tickets in a lottery within or without this state, or for making, receiving, or registering any bets or stakes for the drawing, or result of such a lottery, or who advertises or in any way publishes any account of an opening, setting up, or keeping of such an office or place, is guilty of a misdemeanor.

Derivation: Penal Code, § 329.

People v. Jackson, 3 Den. 101.

§ 1378. Insuring lottery tickets.

A person who insures, or receives any consideration for insuring, for or against the drawing of a ticket, share, or interest in a lottery, or of a number of such a ticket, share, or interest, or who receives any valuable consideration upon an agreement to pay money, or deliver property, in the event that a ticket, share, or interest, or a number of such a ticket, share, or interest in a lottery, shall prove fortunate or unfortunate, or shall be drawn or not drawn in a particular way or in a particular order, or who promises or agrees, or offers to pay money, or to deliver property, or to do, or forbear to do, anything for the benefit of any person, with or without consideration, upon any accident or contingency dependent on the drawing thereof, or of any number or ticket therein, is guilty of a misdemeanor.

Derivation: Penal Code, § 330.

Baldwin's Case, 3 City Hall Rec. 96; Kenney's Case, 3 City Hall Rec. 53.

§ 1379. Advertising to insure lottery tickets.

A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an offer, notice, or proposition, in violation of the last section, is guilty of a misdemeanor.

Derivation: Penal Code, § 331.

§ 1380. Property offered for disposal in lotteries, forfeited.

All property offered for sale, or distribution, in violation of the provisions of this article, is forfeited to the people of this state, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the re-

spective district attorneys, to demand, sue for and recover, in behalf of the people, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury, for the benefit of the poor.

Derivation: Penal Code, § 332.

People v. Phillips (1883), 30 Hun, 553.

§ 1381. Letting building for lottery purposes.

A person who lets, or permits to be used any building or portion of a building, knowing that it is intended to be used for any of the purposes declared punishable by this article, is guilty of a misdemeanor.

Derivation: Penal Code, § 333.

Edelsmith v. McGrarren, 4 Daly, 467; Michael v. Bacon, 18 Am. Rep. 138.

§ 1382. Lotteries out of this state.

The provisions of this article are applicable to lotteries drawn or to be drawn out of this state, whether authorized or not by the laws of the state where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.

Derivation: Penal Code, § 334.

§ 1383. Money paid for lottery tickets may be recovered by action.

Any person who shall purchase any share, interest, ticket, certificate of any share or interest, or part of a ticket, or any paper or instrument purporting to be a ticket or share or interest in any ticket, or purporting to be a certificate of any share or interest in any ticket, or in any portion of any lottery, may sue for and recover double the sum of money, and double the value of goods or things in action, which he may have paid or delivered in consideration of such purchase, with double costs of suit.

Any person who shall have paid any money, or valuable thing, for a chance or interest in any raffle or distribution, prohibited by the preceding sections, may sue for and recover the same of the person to whom such payment or delivery was made.

Derivation: R. S., pt. 1, ch. 20, tit. 8, §§ 25, 32.

§ **1384. Prizes in lotteries, forfeited.**

Any prize that shall be drawn in any lottery shall be forfeited to the use of the poor; and it shall be the duty of the overseers of the poor of the town where the person or persons drawing such prize, or any of them, shall reside, to sue for the same, in their names; and they shall recover the same, in an action for money had and received.

Derivation: R. S., pt. 1, ch. 20, tit. 8, § 33.

§ **1385. Certain transfers of property in pursuance of lottery, void.**

Every grant, bargain, sale, conveyance, or transfer of any real estate, or of any goods, chattels, things in action, or any personal property, which shall hereafter be made in pursuance of any lottery, or for the purpose of aiding and assisting in such lottery, game or other device, to be determined by lot or chance is hereby declared void and of no effect.

Derivation: R. S., pt. 1, ch. 20, tit. 8, § 38.

§ **1386. Contracts, agreements and securities on account of raffling, void.**

All contracts, agreements and securities given, made or executed, for or on account of any raffle, or distribution of money, goods or things in action, for the payment of any money, or other valuable thing, in consideration of a chance in such raffle or distribution, or for the delivery of any money, goods or things in action, so raffled for, or agreed to be distributed as aforesaid, shall be utterly void.

Derivation: R. S., pt. 1, ch. 20, tit. 8, § 24.

ARTICLE 132.

MAIMING.

SECTION 1400. Maiming defined; punishment.
1401. What injury may constitute maiming.
1402. Maiming one's self to escape performance of a duty.
1403. Maiming one's self to obtain alms.
1404. Subsequent recovery of injured person, when a defense.

§ 1400. Maiming defined; punishment.

A person who wilfully, with intent to commit felony, or to injure, disfigure or disable, inflicts upon the person of another an injury which:

1. Seriouly disfigures his person by any mutilation thereof; or,
2. Destroys or disables any member or organ of his body; or,
3. Seriously diminishes his physical vigor by the injury of any member or organ,

Is guilty of maiming, and is punishable by imprisonment for a term not exceeding fifteen years.

The infliction of the injury is presumptive evidence of the intent.

Derivation: Penal Code, § 206, as amended L. 1892, ch. 662, § 5.

Foster v. People (1892), 50 N. Y. 598; Burke v. People (1875), 4 Hun, 481; Godfrey v. People (1875), 63 N. Y. 207, rev'g 5 Hun, 369; Tully v. People (1876), 67 N. Y. 15; People v. Dankberg (1904), 91 App. Div. 68, 86 N. Y. Supp. 423.

§ 1401. What injury may constitute maiming.

To constitute maiming, it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

Derivation: Penal Code, § 209.

§ 1402. Maiming one's self to escape performance of a duty.

A person, who, with design to disable himself from performing a legal duty, existing or anticipated, inflicts upon himself an injury, whereby he is so disabled, is guilty of a felony.

Derivation: Penal Code, § 207.

§ **1403. Maiming one's self to obtain alms.**

A person who inflicts upon himself an injury, such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, in order to excite sympathy, or to obtain alms, or any charitable relief, is guilty of a felony.

Derivation: Penal Code, § 208.

§ **1404. Subsequent recovery of injured person, when a defense.**

Where it appears upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound, that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming can be had; but the defendant may be convicted of assault in any degree.

Derivation: Penal Code, § 210.

ARTICLE 134.

MALICIOUS MISCHIEF.

SECTION 1420. Damaging building or vessel by explosion.
1421. Burning crops or timber, how punished.
1422. Altering signal or light for railroad or vessel.
1423. Injuring highway boundary, pier, sea-wall, dock, rock, buoy, landmark, mile-board, pipe, main, sewer, machine, telegraph, or other property.
1424. False alarms of fire; interference with fire-alarm telegraph systems.
1425. Malicious injury to and destruction of property.
1426. Malicious injury to standing crops, when a misdemeanor.
1427. Removal of books and works of art from library; wilful injury to works of art, ornamental trees or other improvements.
1428. Wilful or malicious injury to certain articles in libraries, galleries, museums or exhibitions.
1429. Destroying or delaying election returns.
1430. Property in house of worship.
1431. Interference with gas or electric meters or steam valves.
1432. Unlawful interference with water meters, water service pipes and their connections.
1433. Injury to property, how punished.
1434. Placing injurious substances on roads.

§ 1420. Damaging building or vessel by explosion.

A person who unlawfully and maliciously, by the explosion of gun-powder, or any other explosive substance, destroys or damages and building or vessel, is punishable as follows:

1. If thereby the life or safety of a human being is endangered, by imprisonment for not more than ten years;

2. In every other case by imprisonment for not more than five years.

Derivation: Penal Code, § 636.

§ 1421. Burning crops or timber, how punished.

A person who, under circumstances not amounting to arson in any of its degrees:

1. Wilfully burns or sets fire to any grain, grass, or growing crop, or standing timber, or to any building, fixtures or appurtenances to real property of another; or

2. Wilfully sets fire to, or assists another to set fire to any wild, waste or forest lands, belonging to the state or to another person whereby such forests are injured or endangered;

Is guilty of felony and is punishable by imprisonment for not more than ten years or by a fine of not more than two thousand dollars, or by both. (Amended by L. 1910, ch. 474, in effect July 1, 1910.)

Derivation: Penal Code, § 637.

People v. Fanshawe (1893), 137 N. Y. 75, aff'g 65 Hun, 77, 19 N. Y. Supp. 865.

§ 1422. Altering signal or light for railroad or vessel.

A person who, with intent to bring a vessel, railway engine, or railway train into danger:

1. Unlawfully or wrongfully shows, masks, extinguishes, alters, or removes a light or other signal; or,

2. Exhibits any false light or signal,

Is punishable by imprisonment for not more than ten years.

Derivation: Penal Code, § 638.

§ 1423. Injuring highway boundary, pier, sea-wall, dock, rock, buoy, landmark, mile-board, pipe, main, sewer, machine, telegraph or other property.

A person who wilfully or maliciously displaces, removes, injures, or destroys:

1. A public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way; or,

2. A pier, boom, or dam, lawfully erected or maintained upon any water within the state, or hoists any gate in or about such dam; or,

3. A pile, or other material, fixed in the ground and used for securing any sea-bank or sea-walls, or the bank or dam of any river or other water, or any dock, quay, jetty, or lock; or,

4. A buoy or beacon, lawfully placed in any waters within the state; or,

5. A tree, rock, post, or other monument, which has been either erected or marked for the purpose of designating a point in the boundary of the state, or of a county, city, town, or village, or of a farm, tract, or lot of land, or any mark or inscription thereon; or,

6. A line of telegraph or telephone, wire or cable, pier or abutment, or the material or property belonging thereto, without lawful authority, or who shall unlawfully and wilfully cut, break, tap, or make connection with any telegraph or telephone line, wire, cable or instrument, or read or copy in any unauthorized manner any message, communication or report passing over it, in this state; or who shall wilfully prevent, obstruct or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance or delivery, in this state, of any authorized message, communication or report by or through any telegraph or telephone line, wire or cable, under the control of any telegraph or telephone company doing business in this state; or who shall aid, agree with, employ or conspire with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, or who shall occupy, use a line, or shall knowingly permit another to occupy, use a line, a room, table, establishment or apparatus to unlawfully do or cause to be done any of the acts hereinbefore mentioned; or,

7. A pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendage connected therewith; or,

8. A sewer or drain, or a pipe or main connected therewith, or forming part thereof; or,

9. Destroys or damages with intent to destroy or render useless any engine, machine, tool or implement intended for use in trade or husbandry, is punishable by imprisonment for not more than two years.

10. Any person who shall without authority of the corporation owning the same open any fire-hydrant, except for the purpose of extinguishing a fire, or who shall wantonly injure or impair the same, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of ten dollars or by imprisonment in a county jail for the term of ten days; and it shall be the duty of all policemen, deputy sheriffs or constables to arrest any person found violating this subdivision.

11. A person who wilfully or maliciously displaces, removes, injures or destroys a mile-board, mile-stone, danger sign or signal, or guide sign or post, or any inscription thereon, lawfully within a public highway; or who, in any manner paints, puts or affixes any business or commercial advertisement on or to any stone, tree, fence, stump, pole, building or other structure, which is the property of another, without first obtaining the written consent of such owner thereof, or who in any manner paints, puts or affixes such an advertisement on or to any stone, tree, fence, stump, pole, mile-board, mile-stone, danger-sign, danger-signal, guide-sign, guide-post, billboard, building or other structure within the limits of a public highway is guilty of a misdemeanor. Any advertisement in or upon a public highway in violation of the provisions of this subdivision may be taken down, removed or destroyed by any one. (Am'd by L. 1911, ch. 316, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 639 (7), as amended L. 1892, ch. 372, § 1; Penal Code, § 639 (11), added L. 1899, ch. 338, § 1.

Wass v. Stephens (1891), 128 N. Y. 123; Hewett v. Newburger (1894), 141 N. Y. 538, rev'g 66 Hun, 230, 20 N. Y. Supp. 913; People v. Bates (1894), 79 Hun, 584, 29 N. Y. Supp. 894; McMorris v. Howell (1903), 89 App. Div. 272, 85 N. Y. Supp. 1018, 111 N. Y. Supp. 204; People v. Gillies (1907), 57 Misc. 568, 109 N. Y. Supp. 945, 21 Crim. Rep. 413.

§ 1424. False alarms of fire; interference with fire-alarm telegraph systems.

Any person who shall wilfully give any false alarm of fire, or who shall wilfully tamper, meddle or interfere with any station or signal box of any fire-alarm telegraph system, or any auxiliary fire appliance, or who shall wilfully break, injure, deface or remove any such box or station, or who shall wilfully break, injure,

destroy, or disturb any of the wires, poles or other supports and appliances connected with or forming a part of any fire-alarm telegraph system, or any auxiliary fire appliance, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars or by imprisonment for not less than ten days or by both such fine and imprisonment.

Derivation: Penal Code, § 639a, added L. 1905, ch. 279; amended L. 1908, ch. 276.

§ 1425. Malicious injury to and destruction of property.

A person who wilfully:

1. Cuts down, destroys or injures any wood or timber standing or growing, or which has been cut down and is lying on lands of another, or of the people of the state; or,

2. Cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the state; or,

3. Severs from the freehold of another, or of the people of the state, any produce thereof, or any thing attached thereto; or,

4. Digs, takes or carries away without lawful authority or consent from any lot of land in any city or incorporated village, or from any lands included within the limits of a street or avenue laid down on the map of such city or village, or otherwise recognized or established, any earth, soil or stone; or,

5. Enters without the consent of the owner or occupant any orchard, fruit garden, vineyard or ground whereon is cultivated any fruit, with intent to take, injure or destroy any thing there growing or grown; or,

6. Cuts down, destroys or in any way injures any shrub, tree or vine being or growing within any such orchard, garden, vineyard or upon any such ground, or any building, frame work or erection thereon; or,

7. Maliciously injures any ice upon any water from which ice is taken as an article of merchandise with intent to injure the owner thereof, or enters or skates upon any pond or body of water not navigable, kept and used for the purpose of taking ice therefrom as an article of merchandise, and upon or adjoining which a notice has been placed in a conspicuous position forbidding such entry, and stating the purpose for which said body of water is kept or used, or puts or throws upon or into any such pond or body of water any stick, stone or other substance to the injury of the ice or water; or,

8. Unlawfully takes or carries away or interferes with or disturbs by any means the oysters or other shell fish of another, legally planted upon the bed of any river, bay, sound or water of this state, or removes, pulls up or destroys any stake or buoy designated or marking out any legally planted oyster bed of another, is guilty of a misdemeanor; and any oysters planted upon the bed of any waters of this state leased by the commissioners of fisheries shall be deemed legally planted, and evidence that any boat or vessel has been used for the purpose of taking, carrying away or interfering with such oysters shall be presumptive evidence of guilt as against the owner, master or crew of such vessel; or,

9. Intrudes or places any hovel, shanty or building upon, or within the limits of any lot or piece of land within any incorporated city or village, without the consent of the owner, or within the boundaries of any street or avenue within such city or village; or,

10. Kills, wounds or traps any bird, deer, squirrel, rabbit or other animal within the limits of any cemetery or public burying ground, or of any public park or pleasure ground, or removes the young of any such animal, or the eggs of any such bird, from any cemetery, park or pleasure ground, or exposes for sale, or knowingly buys or sells any bird or animal so killed or taken; or,

11. Drives or leads along a public highway a wild and dangerous animal, or vehicle or engine propelled by steam, except upon a railroad, along a public highway, or causes or directs such animal, vehicle or engine to be so driven, led or to be made to pass, unless a person of mature age shall precede such animal, vehicle or engine by at least one-eighth of a mile, carrying a red light, if in the night time, and gives warning to all persons whom he meets traveling such highway, of the approach of such animal, vehicle or engine; or,

11-a. [Added, 1909.] With intent so to do, damages in any manner an automobile or other motor vehicle; or,

Added by L. 1909, ch. 525. In effect Sept. 1, 1909.

12. Takes or attempts to take, without the consent of the owner of any lake or pond, any fish from the waters thereof, provided such lake or pond is so situated that fish can not pass thereinto from the waters of any other lake, pond or stream, either public or owned by other persons; or, without the consent of the owner of any such lake or pond, places therein any piscivorous fish or any poison or other substance injurious to the health

of fish, or lets the waters out of any such lake or pond, with intent to take fish therefrom or to harm fish therein; or,

13. Injures any arsenal or armory, or its fixtures, or any uniforms, arms or equipments, or other property therein deposited; or,

14. Trespasses upon any rifle range lawfully used by or in connection with the national guard of the state, or any organization, division or district thereof, or injures any target or other property situate thereon, or wilfully violates thereon any regulation established to maintain order, preserve property or prevent accident upon such range, or removes, mutilates or destroys a battle flag, book, placard, relic or record deposited or kept in the state military bureau; or,

15. Cuts, spoils or destroys any cordage, cable, buoys, buoy-rope, head-fast or other fast fixed to the anchor or moorings belonging to any vessel, or who shall, with intent to injure, tamper in any way with the lines or cables by which any vessel is moored or made fast, or who shall, with intent to injure, tamper in any manner with the steering-gear, bell-gear, engines, machinery, lights or any other equipments of any vessel,

Shall be deemed guilty of a misdemeanor.

16. Any person, who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature upon any flag, standard, color or ensign of the United States of America or state flag of this state or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article or substance, on which so placed, or who shall publicly mutilate, deface, defile, or defy, *trample upon, or cast* contempt, either by words or act, upon any

such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days, or both, in the discretion of the court; and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered with costs in a civil action, or suit, in any court having jurisdiction, and such action or suit may be brought by or in the name of any citizen of this state, and such penalty when collected less the reasonable cost and expense of action or suit and recovery to be certified by the district attorney of the county in which the offense is committed shall be paid into the treasury of this state; and two or more penalties may be sued for and recovered in the same action or suit. The words, flag, standard, color or ensign, as used in this subdivision or section, shall include any flag, standard, color, ensign, or any picture or representation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign, of the United States of America, or a picture or representation, of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, or ensign of the United States of America. The possession by any person, other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be anything made unlawful at any time by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section shall be presumptive evidence that the same is in violation of this section, and was made, done or created after the first day of September, nineteen hundred and five, and that such flag, standard, color, ensign, or article, substance, or thing, did not exist on the first day of September, nineteen hundred and five.

Derivation: Penal Code, § 640, as amended L. 1892, ch. 692, § 1; subd. 8, as amended L. 1888, ch. 491, § 1; L. 1894, ch. 164, § 1; L. 1894, ch. 320, § 1; subd. 12, added L. 1889, ch. 497, § 1; subd. 13, added L. 1893, ch. 692, § 2; subd. 14, added L. 1893, ch. 692, § 2, amended L. 1894, ch. 551, § 1; L. 1896, ch. 552, § 1; subd. 15, added L. 1896, ch. 552, § 1; subd. 16, added L. 1899, ch. 12, § 1, amended L. 1903, ch. 272, § 1; L. 1905, ch. 80, § 1; L. 1905, ch. 440, § 1.

Anderson v. How (1889), 116 N. Y. 336; **Mullen v. Village of Glens Falls** (1896), 11 App. Div. 275, 42 N. Y. Supp. 113; **Rice v. Buffalo Steel, etc.** (1897), 17 App. Div. 462, 45 N. Y. Supp. 277; **Nason v. West** (1900), 31 Misc. 583, 65 N. Y. Supp. 651; **People v. McLaughlin** (1901), 57 App. Div.

454, 68 N. Y. Supp. 246, 15 N. Y. Cr. 337; McMorris v. Howell (1903), 89 App. Div. 274, 85 N. Y. Supp. 1018; People ex rel. Pike v. Van De Carr (1904), 178 N. Y. 425, 19 Crim. Rep. 332, aff'g 86 N. Y. Supp. 644, 91 App. Div. 20; see also People v. Becker, 10 N. Y. Supp. 676; Wait v. Green, 5 Park. 185; O'Donnell v. McIntyre, 16 Abb. N. C. 87; People v. Upton, 9 N. Y. Supp. 684.

§ 1426. Malicious injury to standing crops, when a misdemeanor.

A person, who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which punishment is not otherwise prescribed by this chapter or by some other statute, is guilty of a misdemeanor.

Derivation: Penal Code, § 646.

People v. Upton, 9 N. Y. Supp. 684.

§ 1427. Removal of books and works of art from library, wilful injury to works of art, ornamental trees or other improvements.

Any person who:

1. Removes or assists in removing any book, manuscript, map, print, coin, medal, printing or other literary article or work of art from the library building of any reference library company, except for its preservation or repair or for the purpose of its deposit in some other building of the company, or, being a trustee or officer of such company, consents to the removal thereof; or, upon such removal refuses to permit the same to be restored; or,

2. Not being the owner thereof, and without lawful authority, wilfully injures, disfigures, removes or destroys a gravestone, monument, work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, whether situated upon private grounds or upon the street, road or sidewalk, cemetery or public park or place, or removes from any grave in a cemetery any flowers, memorials or other tokens of affection, or other thing connected with them,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 647, as amended L. 1892, ch. 692, § 1.

People v. Richards (1888), 108 N. Y. 137, rev'g 44 Hun, 278; Schultz v. Greenwood Cemetery (1907), 190 N. Y. 276, rev'g 112 App. Div. 922, 98 N. Y. Supp. 1114.

§ 1428. Wilful or malicious injury to certain articles in libraries, galleries, museums or exhibitions.

A person who wilfully or maliciously cuts, tears, defaces, dis-

figures, soils, obliterates, breaks or destroys, a book, map, chart, picture, engraving, statute, coin, model, apparatus, specimen, or other work of literature or object of art, or curiosity, deposited in a public library, gallery, museum, collection, fair, or exhibition, or in a library, gallery, museum, collection or exhibition belonging to any incorporated college or university, or to any other incorporated institution devoted to educational, scientific, literary, artistic, historical or charitable purposes, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 648, as amended L. 1907, ch. 405, § 1.

§ 1429. Destroying or delaying election returns.

A messenger appointed by authority of law to receive and carry a report, certificate or certified copy of any statement relating to the result of any election, who wilfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law; and a person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who wilfully does any injury or other act in this section specified, is punishable by imprisonment in a state prison not exceeding five years.

Derivation: Penal Code, § 649, as amended L. 1892, ch. 662, § 24.
People v. Wise (1885), 3 N. Y. Cr. 303, 2 How. Pr. (N. S.) 92.

§ 1430. Property in house of worship.

A person, who wilfully and without authority, breaks, defaces or otherwise injures any house of religious worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

Derivation: Penal Code, § 650.

§ 1431. Interference with gas or electric meters or steam valves.

A person who wilfully with intent to injure or defraud:

1. Connects a tube, pipe, wire or other instrument or contrivance with a pipe or wire used for the conducting or supplying illuminating gas, fuel, natural gas or electricity in such a manner

as to supply such gas or electricity to any burner, orifice, lamp or motor where the same is or can be burned or used without passing through the meter or instrument provided for registering the quantity consumed, or uses such gas or electricity obtained by reason of the making of such connection; or,

2. Obstructs, alters, injures or prevents the action of a meter or other instrument used to measure or register the quantity of illuminating fuel, natural gas or electricity consumed in a house or apartment, or at an orifice or burner, lamp or motor, or by a consumer or other person or a person other than a state inspector or a deputy inspector of gas meters or an employee of the company owning any gas or electric meter, who wilfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any such meter so detached or disconnected; or,

3. In any manner whatever, changes, extends or alters any service or other pipe, wire or attachment of any kind connecting or through which natural or artificial gas or electricity is furnished from the gas mains or pipes or wires of any person, company or corporation without first procuring from said person, company or corporation written permission to make such change, extension or alterations, or uses gas or electricity obtained by reason of such changes, extensions or alterations without first procuring the written permission aforesaid; or,

4. Makes any connection or re-connection with the gas mains, service pipes or wires of any person, company or corporation furnishing to consumers natural or artificial gas or electricity, or turns on or off or in any manner interferes with any valve or stopcock or other appliances belonging to such person, company or corporation and connected with its service or other pipes or wires, or enlarges the orifice of mixers, or uses natural gas for heating purposes except through mixers, or uses electricity or artificial gas for any purpose before it has passed through an instrument for measuring the quantity consumed, without first procuring from such person, company or corporation a written permit to turn on or off such stopcock or valve, or to make such connections or re-connections, or to enlarge the orifice of mixers or to use for heating purposes without mixers, or to interfere with the valves, stopcocks, wires, or other appliances of such person, company or corporation as the case may be; or,

5. Retains possession of or refuses to deliver any mixer or

mixers, meter or meters, lamp or lamps, or other appliances which may be or may have been loaned or rented to them by any person, company or corporation for the purpose of furnishing gas, electricity or power through the same, or who sells, loans or in any manner disposes of the same to any person or persons other than the said person, company or corporation entitled to the possession of the same; or,

6. Sets on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person, company or corporation, in conveying gas to consumers, or interferes in any manner with the wells, pipes, mains, gateboxes, valves, stopcocks, wires, cables, conduits, or any other appliances, machinery or property of any person, company or corporation engaged in furnishing gas to consumers unless employed by or acting under the authority and direction of such person, company or corporation; or,

7. Opens or causes to be opened or re-connects or causes to be re-connected any valve lawfully closed or disconnected by a district steam corporation; or,

8. Turns on steam or causes it to be turned on, or to re-enter any premises when the same has been lawfully stopped from entering such premises,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 651, as amended L. 1888, ch. 219; L. 1892, chs. 692, 699; L. 1893, ch. 692; L. 1900, ch. 589; L. 1906, ch. 453.

§ 1432. Unlawful interference with water meters, water service pipes and their connections.

A person who, wilfully, with intent to injure or defraud:

1. Breaks or defaces, or causes to be broken or defaced, the seal of a water meter; or,

2. Obstructs, alters, injures or prevents, or causes to be obstructed, altered, injured or prevented, the action of any such meter or other instrument used to measure or register the quantity of water supplied to or consumed by any person, corporation or company; or,

3. Makes or causes to be made any connection by means of pipe, conduit or otherwise with the water main or service pipe of any person, corporation or company furnishing water to consumers, in such manner as to take water from said main or service pipe without its passing through the meter or other in-

strument provided for registering or measuring the amount or quantity of water taken from said main or service pipe; or,

4. Makes any connection or re-connection with the water main or service pipe of any person, corporation or company furnishing water to consumers, or turns on or off, or in any manner interferes with any valve, stopcock or other appliance belonging to said person, corporation or company, without obtaining from such person, corporation or company a written permit to make such connection or re-connection or to turn or otherwise interfere with said valve, stopcock or other appliance; or,

5. Prevents, by the erection of any device or construction, or by any other means, free access to any such meter by the person, company or corporation furnishing such water; or interferes, obstructs or prevents, by any means, the reading or inspection of such meter,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 651a, added L. 1902, ch. 333, § 1.

§ 1433. Injury to property, how punished.

A person who unlawfully and wilfully destroys or injures any real or personal property of another, or who without authority or permission from a person who has the right to give such authority or permission, loosens any brake or blocking of any car standing on any railroad track in this state, or without like authority or permission, puts upon or runs any hand car, or other car, on any railroad track in this state, or without like authority or permission, interferes or meddles with any brake or coupling of any car while standing or moving on any railroad track in this state, or takes any part therein, in a case where the punishment is not specially prescribed by statute, is punishable as follows:

1. If the value of the property destroyed, or the diminution in the value of the property by the injury is more than twenty-five dollars, by imprisonment for not more than four years.

2. In any other case, by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

3. And in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property, or the public officer having charge thereof.

Derivation: Penal Code, § 654, as amended L. 1892, ch. 186.

People v. Christy (1892), 65 Hun, 349, 20 N. Y. Supp. 278, 8 N. Y. Cr. 481; People v. Kane (1892), 131 N. Y. 111; People v. Bosworth (1892), 64 Hun, 72, 19 N. Y. Supp. 114; Hewitt v. Newburger (1894), 141 N. Y. 538, rev'g 66 Hun, 230, 20 N. Y. Supp. 913; People v. Kane (1894), 142 N. Y. 366, rev'g 73 Hun, 542, 26 N. Y. Supp. 1121; Prignitz v. McTiernan (1896), 18 Misc. 652, 43 N. Y. Supp. 974; People v. Knatt (1898), 156 N. Y. 302, rev'g 19 App. Div. 628, 46 N. Y. Supp. 1098; Layton v. McConnell (1901), 61 App. Div. 447, 70 N. Y. Supp. 679; Curley v. Electric Vehicle Co. (1902), 68 App. Div. 1820, 74 N. Y. Supp. 35; O'Dell v. Hatfield (1903), 40 Misc. 13, 81 N. Y. Supp. 158; see also Von Hoffman v. Kendall, 17 N. Y. Supp. 713; Yeamans v. Nichols, 81 N. Y. Supp. 500.

§ 1434. Placing injurious substances on roads.

Whoever, with intent to prevent the free use of a cycle thereon, shall throw, drop or place, or shall cause or procure to be thrown, dropped or placed, in or upon any cycle path, avenue, street, sidewalk, alley, road, highway or public way or place, any glass, tacks, nails, pieces of metal, brier, thorn or other substance which might injure or puncture any tire used on a cycle, or which might wound, disable or injure any person using such cycle, shall be guilty of a misdemeanor, and on conviction be fined not less than five nor more than fifty dollars.

Derivation: Penal Code, § 654a, added L. 1896, ch. 304.

Lechner v. Village of Newark (1896), 19 Misc. 452, 44 N. Y. Supp. 556; People v. Schermerhorn (1908), 59 Misc. 149, 112 N. Y. Supp. 222.

ARTICLE 136.

MARRIAGES.

SECTION 1450. Solemnizing unlawful marriages.

§ 1450. Solemnizing unlawful marriages.

A minister or magistrate who solemnizes a marriage when either of the parties is known to him to be under the age of legal consent, or to be an idiot or insane person, or a marriage to which within his knowledge a legal impediment exists, is guilty of a misdemeanor. Until a marriage has been dissolved or annulled by a proper tribunal or court of competent jurisdiction, any person who shall assume to grant a divorce, in writing, purporting to divorce husband and wife and permitting them or either of them to lawfully marry again, shall be guilty of a misdemeanor punishable by fine for the first offense not exceeding five hundred dollars, and for the second offense one thousand dollars, or imprisonment not exceeding one year, or both such fine and imprisonment.

Derivation: Penal Code, § 376, as amended L. 1893, ch. 461.

ARTICLE 138.

MARRIED WOMEN.

SECTION 1460. Presence of husband no defense.

[Article 138 repealed and § 1460 renumbered § 1092 by L. 1909, ch. 524. In effect May 27, 1909.]

ARTICLE 140.

MEETINGS.

SECTION 1470. Disturbing lawful meetings.
1471. Leaving state with intent to elude provisions of this article.
1472. Witnesses' privilege.

§ 1470. Disturbing lawful meetings.

A person who, without authority of law, wilfully disturbs any assembly or meeting, not unlawful in its character, is guilty of a misdemeanor.

Derivation: Penal Code, § 448.

People v. Barber (1893), 74 Hun, 368, 26 N. Y. Supp. 417; People ex rel. Taylor v. Seaman (1894), 8 Misc. 152, 29 N. Y. Supp. 329; see also People v. Judson, 11 Daly, 1, 82.

§ 1471. Leaving state with intent to elude provisions of this article.

A person who leaves the state, with intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

Derivation: Penal Code, § 461.

§ 1472. Witnesses' privilege.

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

Derivation: Penal Code, § 469.

ARTICLE 142.

MILITARY.

SECTION 1480. Depriving members of national guard of employment.
1481. Discrimination against members of national guard.
1482. Drugging person for enlistment.
1483. Seizing military stores belonging to the state.
1484. Converting military property; unlawfully wearing uniform.
1485. Introduction of spirituous or malt liquors into arsenal or armory.
1486. Unlawfully exacting toll of a member of the national guard.
1487. Failure to respond to military duty.

§ 1480. Depriving members of national guard of employment.

A person who, either by himself or with another, wilfully deprives a member of the national guard of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of said national guard, or his employer, in respect of his trade, business, or employment, because said member of said national guard is such member, or dissuades any person from enlistment in the said national guard by threat of injury to him in case he shall so enlist, in respect of his employment, trade, or business, is guilty of a misdemeanor.

Derivation: Penal Code, § 171b, added L. 1903, ch. 349.

§ 1481. Discrimination against members of national guard.

No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment, or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote, or regulation, discriminate against any member of the national guard of the state of New York, because of such membership in respect of the eligibility of such member of the said national guard to membership in such association or corporation, or in respect of his right to retain said last mentioned membership; it being the purpose of this section and the section immediately preceding to protect a member of the said national guard from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership of said national guard. A person who aids in enforcing any such provisions against a member of

the said national guard with the intent to discriminate against him because of such membership, is guilty of a misdemeanor.

Derivation: Penal Code, § 171c, added L. 1903, ch. 349.

§ 1482. Drugging person for enlistment.

A person who administers any drug or stupefying substance to another, with the intent, while such person is under the influence thereof, to induce such person to enter the military or naval service of the United States, of this state, or any other state, country or government, is guilty of a misdemeanor.

Derivation: Penal Code, § 447

§ 1483. Seizing military stores belonging to the state.

A person who enters any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this state; and a person who enters any such place with intent so to do, is punishable by imprisonment in a state prison not exceeding ten years.

Derivation: Penal Code, § 484.

§ 1484. Converting military property; unlawfully wearing uniform.

Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard, or in any manner pawn or pledge any arms, uniforms or equipments, issued under the provisions of the military law, and any person not a member of the national guard, except members of organizations specially authorized to do so by the military law, who shall wear any uniform or designation of grade similar to those in use by the national guard, issued or authorized under the provisions of said law, is guilty of a misdemeanor.

Derivation: Penal Code, § 674b, added L. 1894, ch. 551, § 2.

§ 1485. Introduction of spirituous or malt liquors into arsenal or armory.

Any person who introduces any wine, spirituous or malt liquors into any arsenal or armory, except when prescribed for medical

purposes by a medical officer of the national guard, is guilty of a misdemeanor.

Derivation: Penal Code, § 674c, added L. 1894, ch. 551, § 2.

§ 1486. Unlawfully exacting toll of a member of the national guard.

Any person, master or keeper of a toll-gate, toll-bridge or ferry, or any person in charge thereof who wilfully hinders or delays any member of the national guard or refuses free passage to any such member going to or returning from any parade, encampment, drill or meeting which he may be by law required to attend, or wilfully hinders, delays or refuses free passage to any conveyance or military property of the state in charge of a member of said guard, is guilty of a misdemeanor.

Derivation: Penal Code, § 674d, added L. 1894, ch. 551, § 2.

§ 1487. Failure to respond to military duty.

Every member of an independent military organization not regularly organized as an organization of the national guard, who fails to respond or to do military duty, or refuses to enlist when lawfully called upon to do so by the commander-in-chief, in cases of emergency or necessity, is guilty of a misdemeanor.

Derivation: Penal Code, § 674e, added L. 1894, ch. 551, § 2.

ARTICLE 144.

NAVIGATION.

SECTION 1500. Offenses against the navigation law.
1500a. Sound of exhaust on gasoline motor boat to be muffled.
1501. Unlicensed piloting.
1502. Acting as port-warden without authority.
1503. Using net or weir unlawfully in Hudson river.
1504. Lights upon swing bridges.
1505. Interfering with navigation.
1506. Wilfully destroying vessel.
1507. Fitting out or lading any vessel with intent to wreck the same.
1508. Making false manifest.
1509. Destroying invoice.
1510. Motor boats to be provided with mufflers; exceptions.

§ 1500. Offenses against the navigation law.

Any person having the charge, command or control of a steamboat or vessel who:

1. Permits a line used for the purpose of landing or receiving passengers, to be attached in any way to the machinery of any steamboat, or permits a small boat used for the purpose of landing or receiving passengers to be hauled by means of such machinery; or,

2. Carries or permits a steamboat to carry a greater number of passengers than is stated in the certificate of such steamboat issued under the navigation law; or,

3. Wilfully violates any of the provisions of section eleven of the navigation law, relating to the sailing rules; or,

4. Neglects to carry and show on a vessel the lights required by section twelve of the navigation law; or,

5. Neglects to carry on a vessel the life boats and life preservers required by sections fourteen and fifteen of the navigation law; or,

6. Neglects to carry on a vessel the steam fire pump required by section thirteen of the navigation law; or,

7. Intentionally loads or obstructs or causes to be loaded or obstructed in any way the safety valve of the boiler of any steamboat or naptha launch, or employs any other means or device whereby the boiler of such vessel may be subjected to a greater pressure than is allowed by the inspectors' certificate, or intentionally deranges or hinders the operation of any machinery or device employed to denote the stage of the water or steam in any *boiler or to give warning* of approaching danger, or intentionally

permits the water to fall below the prescribed low water limit of the boiler; or,

8. Acts or permits another person to act as officer of a vessel without having the license required by section seventeen of the navigation law, except as permitted by the provisions of section thirty of the navigation law; or,

9. Uses or permits to be used in lamps, lanterns or other lights, on a vessel, any oil which will not stand a fire test of at least three hundred degrees Fahrenheit; or,

10. After employing a steam vessel for towing, receives any commission or compensation for orders given to the owner, captain or agent of any vessel for towage; or interferes with or hinders any such owner, captain or agent, while in the prosecution of his business; or,

11. Neglects to cause the dampers in the pipes or chimneys of a steamboat to be closed, or to otherwise prevent the escape of sparks and coals therefrom while passing near any of the villages or cities situated on the Hudson river, or while landing or receiving passengers or freight, or while lying at the docks or wharves thereof; or,

12. Violates any other provision of the navigation law for which no other punishment is prescribed,

Is guilty of a misdemeanor.

Derivation: Penal Code, §§ 359a, 359b, added L. 1897, ch. 584, §§ 1, 2.

§ 1500-a. Sound of exhaust on gasoline motor boat to be muffled.

A person who operates a boat, barge, vessel or other floating structure, on Lake George, propelled wholly or partly by an engine operated by the explosion of gas, gasoline, naphtha or other substance, without having the exhaust from the engine run through a muffler so constructed and used as to muffle the noise of the exhaust in a reasonable manner, shall be guilty of a misdemeanor; but the provisions of this section shall not apply to any boat, barge, vessel or floating structure while actually competing in a race held under the auspices of any club or racing association. (Am'd by L. 1911, ch. 758, in effect Sept. 1, 1911.)

§ 1501. Unlicensed piloting.

A person other than a lawfully authorized branch Hell Gate pilot who pilots or offers to pilot or tows or offers to tow any boat or vessel (except barges, vessels under fifty-five tons burthen, and canal boats actually used in navigating the canals) through that part of the East river, commonly called Hell Gate, is guilty of a misdemeanor. But no pilotage shall be charged to any vessel un-

der a coasting license, or entering or departing from the port of New York by way of the East river called Hell Gate unless such vessel actually employs a pilot, and the making of such charge or demand without such employment shall be deemed a misdemeanor.

This section does not apply to vessels propelled wholly or partly by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.

Derivation: Penal Code, § 398, as amended L. 1882, ch. 384, § 1; Penal Code, § 399.

People v. Francisco, 10 Abb. Pr. 30; Francisco v. People, 4 Park. 139, 18 How. Pr. 475; Henderson v. Spofford, 10 Abb. Pr. (N. S.) 140, 3 Daly, 361; Comrs. of Pilots v. Pacific Mail SS. Co., 52 N. Y. 609; Stilwell v. Raynor, 12 How. (U. S.) 299; People v. Sperry, 50 Barb. 170.

§ 1502. Acting as port-warden without authority.

A person who not being a port-warden, assumes or undertakes to act as such, or undertakes the performance of any of the duties prescribed by law, as pertaining to the office of port-warden; and a person who knowingly employs any other than the wardens for the performance of such duties, and a person who issues any certificate of a survey on vessels, materials or goods damaged, with intent to avoid the provisions of any statute, is guilty of a misdemeanor.

Derivation: Penal Code, § 400.

Tinkham v. Tapscott (1858), 17 N. Y. 141; Curtin v. People (1882), 26 Hun, 564, aff'd 89 N. Y. 621; see also Wardens v. Cartwright, 4 Sandf. 236.

§ 1503. Using net or weir unlawfully in Hudson river.

A person, who uses any net or weir for setting or attaching nets, or a pole or other fixture in any part of the Hudson river, except as permitted by statute, is guilty of a misdemeanor.

Derivation: Penal Code, § 433.

§ 1504. Lights upon swing bridges.

A corporation, company or individual, owning, maintaining or operating a swing bridge across the Hudson river, who during the navigation season between sundown and sunrise, neglects to keep and maintain upon every such bridge the lights required by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 433a, added L. 1893, ch. 692, § 2.

§ 1505. Interfering with navigation.

A person who throws, or causes, or permits to be thrown, from any boat, scow, or other vessel, or in any other manner, into any of the navigable waters of this state, including bays, sounds and harbors, any earth, ashes, cinders, stone, or other material, or who builds any structure therein, which will in any manner lessen the depth of such waters, or interfere with the free and safe navigation thereof, is guilty of a misdemeanor.

Derivation: Penal Code, § 444.

§ 1506. Wilfully destroying vessel.

A person, who wrecks, burns, sinks, scuttles, or otherwise injures or destroys a vessel, or the cargo of a vessel, or wilfully permits the same to be wrecked, burned, sunk, scuttled, or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment for not more than five years.

Derivation. Penal Code, § 575.

§ 1507. Fitting out or lading any vessel with intent to wreck the same.

A person who fits out any vessel, or who lades any cargo on board of a vessel, with intent to permit or cause the same to be wrecked, sunk or otherwise injured or destroyed, and thereby to defraud or prejudice an insurer or another person, is punishable by imprisonment in the state prison not exceeding ten years.

Derivation: Penal Code, § 576, as amended L. 1892, ch. 662, § 18.

§ 1508. Making false manifest.

A person, guilty of preparing, making or subscribing, a false or fraudulent manifest, invoice, bill of lading, ship's register or protest, with intent to defraud another, is punishable by imprisonment in a state prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

Derivation: Penal Code, § 577.

Matter of Sayles (1903), 40 Misc. 185, 17 N. Y. Cr. 234, 81 N. Y. Supp. 258.

§ 1509. Destroying invoice.

A person, who wilfully destroys or suppresses an invoice, bill of lading, or any other document, writing, or thing whatever, which tends to show the ownership of wrecked property, is guilty of a misdemeanor.

Derivation: Penal Code, § 437.

§ 1510. Motor boats to be provided with mufflers; exceptions.

It shall be unlawful to use a boat propelled in whole or in part by gas, gasoline or naphtha, or similar explosive medium, unless the same is provided with an under-water exhaust or muffler so constructed and used as to muffle in a reasonable manner the noise of the explosion. The provisions of this section shall apply only to tidal waters or the waters of this state wherein the tide ebbs and flows and shall not apply to boats competing in a race held under the direction of a duly incorporated yacht club or racing association. Any person who operates a boat in violation of the provisions of this section shall be guilty of a misdemeanor and punishable by a fine of not more than twenty-five dollars. (Added by L. 1911, ch. 840, in effect Sept. 1, 1911.)

ARTICLE 146.

NEGOTIABLE INSTRUMENTS.

SECTION 1520. Notes given for patent-rights.
1521. Notes given for a speculative consideration.

§ 1520. Notes given for patent-rights.

A person who takes, sells or transfers a promissory note or other negotiable instrument, knowing the consideration of such note or instrument to consist in whole or in part, of the right to make, use or sell any patent invention or inventions, or any invention claimed or represented to be patented, without having the words "given for a patent-right" written or printed legibly and prominently on the face of such note or instrument above the signature thereto, is guilty of a misdemeanor.

Derivation: Penal Code, § 384m, added L. 1897, ch. 613.

People v. Beattie (1904), 96 App. Div. 383, 89 N. Y. Supp. 193; People ex rel. Appel v. Zimmerman (1905), 102 App. Div. 103, 106, 92 N. Y. Supp. 497.

§ 1521. Notes given for a speculative consideration.

A person who takes, sells or transfers a promissory note or order negotiable instrument, knowing the consideration of such note or instrument to consist in whole or in part of the purchase price of any farm product at a price greater by four or more times than the fair market value of the same product at the time in the locality, or in which the consideration shall be in whole or in part, membership of and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at such rate, without having the words "given for a speculative consideration," or other words clearly showing the nature of the consideration prominently and legibly written or printed on the face of such note or instrument above the signature thereof, is guilty of a misdemeanor.

Derivation: Penal Code, § 384n, added L. 1897, ch. 613.

ARTICLE 148.
NUISANCES.

SECTION 1530. Public nuisance defined.
1531. Unequal damage.
1532. Maintaining nuisance.
1533. Permitting use of building for nuisance; opium smoking.

§ 1530. Public nuisance defined.

A " public nuisance " is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission:

1. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons; or,

2. Offends public decency; or,

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a stream, creek or other body of water which has been dredged or cleared at public expense, or a public park, square, street or highway; or,

4. In any way renders a considerable number of persons insecure in life, or the use of property.

Derivation: Penal Code, § 385, subd. 3, as amended L. 1901, ch. 367.

Brown v. Bowen (1864), 30 N. Y. 519; Irvine v. Wood (1872), 51 N. Y. 224, aff'g 4 Robt. 138, 5 id. 482; Adams v. Popham (1879), 76 N. Y. 410; Clifford v. Dam (1880), 81 N. Y. 52, aff'g 44 N. Y. Super. 391; People v. Livingston (1882), 27 Hun, 105; Cain v. Syracuse (1883), 29 Hun, 105, aff'd 95 N. Y. 83, 89; People v. Lochfelm (1886), 103 N. Y. 1, 4 N. Y. Cr. 159; Callanan v. Gilman (1889), 107 N. Y. 360, 1 Am. St. Rep. 83, mod'f'g 52 N. Y. Super. 112; People v. Crounse (1889), 7 N. Y. Cr. 11, 51 Hun, 489, 4 N. Y. Supp. 266; Flynn v. Taylor (1891), 127 N. Y. 599, aff'g 53 Hun, 167, 6 N. Y. Supp. 96; People v. Kellog (1893), 67 Hun, 546, 22 N. Y. Supp. 490; Tinker v. N. Y., etc., & R. Co. (1898), 157 N. Y. 318, aff'd 92 Hun, 269, 36 N. Y. Supp. 672; Eldert v. Long Island R. Co. (1898), 28 App. Div. 451, 51 N. Y. Supp. 186, aff'd 165 N. Y. 651; People ex rel. Cocheu v. Dettmer (1898), 26 App. Div. 326, 49 N. Y. Supp. 877; City of Buffalo v. D., L. & W. R. Co. (1907), 190 N. Y. 84, rev'g 114 App. Div. 915; Johnson v. City of New York (1905), 109 App. Div. 821, 825, 96 N. Y. Supp. 754.

Subd. 3.—Johnson v. City of New York (1906), 186 N. Y. 146; People v. Hoffman (1907), 118 App. Div. 862, 103 N. Y. Supp. 1000, 21 Crim. Rep. 140; Fifth Ave. Coach Co. v. City of N. Y. (1908), 58 Misc. 405, 111 N. Y. Supp. 759; Melker v. City of New York (1908), 90 N. Y. 488; see also Anderson v. Rochester, etc., 9 How. 553; Chenango Bridge v. Lewis, 63 Barb. 111; Conklin v. Phoenix Mills, 62 Barb. 299; People v. Cunningham, 1 Den. 524; Hamilton v. N. Y. & H. R. Co., 9 Pai. 71; Harris v. Thompson, 9 Barb. 350; Hertz v. L. I. R. Co., 13 Barb. 646; Hutchins v. Smith, 63 Barb. 111;

Knox v. New York, 55 Barb. 404; McCannis v. Citizens Gas Light Co., 40 Barb. 380; Osborn v. Union Ferry Co., 53 Barb. 629; Phoenix v. Comrs. of Emigration, 12 How. 1; Renwick v. Morris, 3 Hill, 621, 7 Hill, 575; People v. Sargeant, 8 Cow. 139; Thompson v. Allen, 7 Lans. 459; Wetmore v. Story, 22 Barb. 414; Wetmore v. Atlantic White Lead Co., 37 Barb. 70; State v. Burdetta, 73 Ind. 185, 38 Am. Rep. 117; Bagley v. People, 43 Mich. 355, 38 Am. Rep. 192; In Re Binghampton Bridge, 3 Wall. 51.

§ 1531. Unequal damage.

An act which affects a considerable number of persons, in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal.

Derivation: Penal Code, § 386.

§ 1532. Maintaining nuisance.

A person who commits or maintains a public nuisance, the punishment for which is not specially prescribed, or who wilfully omits or refuses to perform any legal duty relating to the removal of such a public nuisance, is guilty of a misdemeanor.

Derivation: Penal Code, § 387.

Wasmer v. Railroad Co. (1880), 80 N. Y. 212, aff'g 3 Daly, 280; Simmons v. Everson (1891), 124 N. Y. 323; People v. Hoffman (1907), 118 App. Div. 862, 103 N. Y. Supp. 1000, 21 Crim. Rep. 140; see also Syracuse, etc. R. Co., 66 Barb. 25.

§ 1533. Permitting use of building for nuisance; opium smoking.

A person who:

1. Lets, or permits to be used, a building, or a portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance; or,

2. Opens or maintains a place where opium, or any of its preparations, is smoked by other persons; or,

3. At such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used; or,

4. Visits or resorts to any such place for the purpose of smoking opium or its said preparations,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 388, as amended L. 1889, ch. 8.

People v. Reed (1899), 46 App. Div. 625, 61 N. Y. Supp. 520; 14 N. Y. Cr. 326; People v. Miller (1901), 63 App. Div. 11, 71 N. Y. Supp. 212; see also State v. Ah Crew, 16 Nev. 50, 40 Am. Rep. 488.

ARTICLE 150.

OYSTERS.

SECTION 1550. Nonresident taking or planting oysters.
1551. Use of certain dredges.

§ 1550. Nonresident taking or planting oysters.

A person, who not being at the time an actual inhabitant and resident of this state, plants oysters in the waters of this state, without the consent of the owner of the same, or of the shore, or gathers oysters or other shell fish from their beds of natural growth, in any such waters on his own account or for his own benefit, or the benefit of a nonresident employer, is guilty of a misdemeanor, punishable by imprisonment not exceeding six months, or by a fine not exceeding one hundred dollars, or both.

Derivation: Penal Code, § 441.

People v. Hazen (1890), 121 N. Y. 313, rev'g 5 N. Y. Supp. 337; People v. Lowndes (1892), 130 N. Y. 455, rev'g 55 Hun, 469, 8 N. Y. Supp. 908; see also McCarty v. Holman, 10 N. Y. Week. Dig. 501.

§ 1551. Use of certain dredges.

A person who uses a dredge or drag operated by steam, or any dredge or drag weighing over thirty pounds for the purpose of catching, or taking oysters or other shell fish from beds of natural growth in the waters of this state, is guilty of a misdemeanor.

Derivation: Penal Code, § 442, as amended L. 1888, ch. 526.

ARTICLE 152.

PASSAGE TICKETS.

SECTION 1560. Company defined.
1561. Certain sales and exchanges of passage tickets prohibited.
1562. Redemption of unused passage tickets.
1563. Advertising as agent, without written authorization; false or misleading information.
1564. Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain.
1565. Punishment for violation of two preceding sections.
1566. Street railroad transfer tickets not to be given away or sold.
1567. Offices kept for unlawful sale of passage tickets declared disorderly houses.
1568. Owners, pursers and clerks allowed to sell tickets.
1569. Station masters, conductors and agents allowed to sell tickets.
1570. What must be stated in passage ticket.
1571. Sale of tickets not filled out, a misdemeanor.
1572. Soliciting the surrender of tickets, a misdemeanor.

§ 1560. Company defined.

The term "company," as used in this article, includes all corporations, whether created under the laws of this state, or of the United States, or of those of any other state or nation.

Derivation: Penal Code, § 627.

§ 1561. Certain sales and exchanges of passage tickets prohibited.

A person who:

1. Sells, or causes to be sold, a passage ticket, or order for such ticket on any railway, vehicle, or vessel, to any immigrant passenger at a higher rate than one and a quarter cents per mile; or,

2. Takes payment for any such ticket or order for a ticket under a false representation as to the class of the ticket, whether immigrant or first-class; or,

3. Directly or indirectly, by means of false representations, purchases or receives from an immigrant passenger any such ticket; or,

4. Procures or solicits any such passenger having such a ticket, to exchange the same for another passage ticket, or to sell the same and purchase some other passage ticket; or,

5. Solicits or books any passenger arriving at the port of New *York from a foreign* country, before such passenger has left the

vessel on which he has arrived, or enters or goes on board any vessel arriving at the port of New York from a foreign country, having immigrant passengers on board, for the purpose of soliciting or booking such passengers, and a person or agent of a corporation employing any person for the purpose of booking such passengers before leaving the ship,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 626.

§ **1562. Redemption of unused passage tickets.**

Every person who shall have purchased a passage ticket from an authorized agent of a railroad company, which shall not have been used, or shall have been used only in part, may, within thirty days after the date of the sale of said ticket, present the same, unused or partly used, for redemption, at the general office of the railroad company which issued said ticket, or at the ticket office where said ticket was sold, or at the ticket office at the point to which the ticket has been used. If said ticket, wholly unused, shall be presented for redemption at the ticket office where sold, the same shall be then and there redeemed by the agent in charge of said ticket office at the price paid for said ticket. If said ticket, partly used, shall be presented for redemption at the ticket office where sold, or at the ticket office at the point to which used, the ticket agent at either of said offices, upon the delivery of said ticket, shall issue to the holder thereof a receipt, properly describing said ticket and setting forth the date of the receipt of said ticket, and the name of the person from whom received, and shall thereupon forthwith transmit said ticket for redemption to the general office. It shall be the duty of every railroad company to redeem tickets presented for redemption, as in this section provided for, promptly and within not to exceed thirty days from the date of presentation at the general office or from the date of the aforesaid receipt. A wholly unused ticket shall be redeemed at the price paid therefor. A partly used ticket shall be redeemed at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket of the same class between the points for which said ticket was actually used. Mileage books shall be redeemed within thirty days after the date of the expiration thereof in the same manner. Every railroad company which shall wrongfully refuse redemption, as in this section provided for, shall forfeit to the aggrieved party fifty dollars, which sum may be recov-

ered, together with the amount of redemption money to which the party is entitled, in an action in any court of competent jurisdiction, together with costs; but no such action can be maintained unless commenced within one year after the cause of action accrued.

Derivation: Penal Code, § 616, in part, as amended L. 1897, ch. 506, § 2. People v. Marcus (1905), 110 App. Div. 255, 260, 97 N. Y. Supp. 322.

§ 1563. Advertising as agent, without written authorization; false or misleading information.

No person issuing, selling or offering to sell any passage ticket or any instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to a passage or conveyance upon any vessel, or a berth or stateroom in any vessel, shall hold himself out to be or advertise himself in any way as the agent of the owners or consignees of such vessel or line, unless he has received authority in writing therefor, specifying the name of the company, line or vessel for which he is authorized to act as agent and the city, town or village, together with the street, and the street number in which his office is kept for the sale of tickets, and unless such written authorization is conspicuously displayed in such office. Provided that this section shall not apply to the sale of passage tickets on board any such vessel or to the offices of the actual owners or consignees of such vessel. No person issuing, selling or offering to sell or holding himself out as being authorized to sell any such passage ticket or instrument giving or purporting to give any such right to passage or conveyance shall give or cause to be given any false or misleading information or shall print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any false or misleading advertisement, circular, circular letter, pamphlet, card, hand-bill or other printed paper or notice in regard to said passage, ticket or instrument or the passage or voyage to which it entitles or purports to entitle its owner, purchaser or holder or line over which, or the vessel for which such passage is sold or offered or as to his agency for such line or vessel. (Am'd by L. 1911, ch. 415, in effect Sept. 1, 1911.

Derivation: Penal Code, § 616a, added L. 1907, ch. 546.

§ 1564. Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain.

No person agreeing to furnish or secure for any other person, for a consideration, passage by vessel from any foreign port to any port in this state shall issue any advice, order, certificate or other instrument purporting to entitle one or more persons to a passage ticket or other evidence of a right of passage, unless every such advice, order, certificate or instrument shall be signed or

countersigned by a duly appointed agent as provided in section fifteen hundred and sixty-three, of the vessel or line over which said advice, order, certificate or other instrument is held out to be good to secure such passage ticket or other evidence of a right of passage. Every such order, advice, certificate or other instrument and every receipt for money paid for or on account of any such advice, order, certificate or other instrument, shall contain a statement of the amount paid or to be paid for such passage; the name, address and age of the person for whom intended; the name of the company or line, if any, to which the vessel on which passage is to be made belongs; the place from which such passage is to commence; the place where such passage is to terminate; the name of the person purchasing such advice, order, certificate or other instrument, and such advice, order, certificate or other instrument must be signed by the person who issues it.

Derivation: Penal Code, § 616b, added L. 1907, ch. 546.

§ 1565. Punishment for violation of two preceding sections. Any person violating any of the provisions of section fifteen hundred and sixty-three, or fifteen hundred and sixty-four, shall be guilty of a misdemeanor and for a second or further violation shall be guilty of a felony.

Derivation: Penal Code, § 616c, added L. 1907, ch. 546.

§ 1566. [Am'd, 1909.] Street railroad transfer tickets not to be given away or sold. No transfer ticket or written or printed instrument giving, or purporting to give, the right of transfer to any person, from a public conveyance operated upon one line or route of a street surface, elevated or underground railroad to a public conveyance upon another line or route of a street surface, elevated or underground railroad, or from one car to another car upon the same line of street surface, elevated or underground railroad shall be issued, sold or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell or give away such a transfer ticket or instrument as aforesaid to a person not lawfully entitled thereto, and any person not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument, or shall sell or give away such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for

passage after the time limited for its use shall have expired, shall be guilty of a misdemeanor.

Derivation: Penal Code, § 619a, added L. 1898, ch. 663.

Amended by L. 1909, ch. 204. In effect Sept. 1, 1909.

§ 1567. Offices kept for unlawful sale of passage tickets declared disorderly houses.

All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this article, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons associating together for the purpose of violating any of the provisions of this article, are punishable by imprisonment in a county jail for a period not exceeding six months.

Derivation: Penal Code, § 621, as amended L. 1892, ch. 662, § 23.

§ 1568. Owners, pursers and clerks allowed to sell tickets.

The provisions of this article do not prevent the actual owners or consignees of any vessel, from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel from selling in his office on board of such vessel, any passage ticket upon such vessel.

Derivation: Penal Code, § 622.

§ 1569. Station masters, conductors and agents allowed to sell tickets.

The provisions of this article do not prevent the station master or other ticket agent upon any railway, from selling in his office at any station on such railway, any passage tickets upon such railway; nor do they prevent any conductor upon a railway from selling such tickets upon the trains of such railway.

Derivation: Penal Code, § 623.

§ 1570. What must be stated in passage ticket.

A ticket or instrument issued as evidence of a right of passage upon the high seas, from any port in this state, to any port of any other state or nation, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for such ticket or instrument must state the name of the vessel on board of which

the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

Derivation: Penal Code, § 624.

Enright v. People, 21 How. Pr. 383.

§ 1571. Sale of tickets not filled out, a misdemeanor.

A person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

Derivation: Penal Code, § 625.

§ 1572. Soliciting the surrender of tickets a misdemeanor.

Any hotel, boarding-house, lodging-house or restaurant owner, proprietor, manager, clerk or other employee or any runner, guide, porter or solicitor who solicits in any manner any immigrant or steerage passenger inward or outward bound, having a railroad or steamship ticket, order or other instrument entitling or purporting to entitle such passenger to transportation or conveyance on any railroad or steamship, to surrender such ticket, order or other instrument to such hotel, boarding-house, lodging-house or restaurant owner, proprietor, manager or other employee or to any runner, guide, porter or solicitor or any other person for the purpose of detaining any such immigrant or steerage passenger in any such hotel, boarding-house, lodging-house, or restaurant, shall be guilty of a misdemeanor. (Added by L. 1911, ch. 540, in effect Sept. 1, 1911.)

ARTICLE 154.

PAWNBROKERS.

SECTION 1590. Pawnbroking without a license.
1591. Refusing to exhibit stolen goods to owner.
1592. Selling before time to redeem.

§ 1590. Pawnbroking without a license.

A person, who carries on the business of a pawnbroker, by receiving goods in pledge for loans at a rate of interest above that allowed by law, except by virtue of a license from a municipal corporation or other authority empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

Derivation: Penal Code, § 353.

§ 1591. Refusing to exhibit stolen goods to owner.

A pawnbroker, or person carrying on the business of a pawnbroker, or a junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor.

Derivation: Penal Code, § 354.

§ 1592. Selling before time to redeem.

A pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, or who wilfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor. No pawnbroker shall transact any pawnbroking business or advance any moneys upon goods pawned or received except between the hours of seven o'clock a. m., and six o'clock p. m., on week days, excepting on Saturday, and then only between the hours of seven o'clock a. m., and twelve o'clock midnight, nor shall any business be transacted by pawnbrokers as such between the hours of twelve o'clock midnight on Saturday and seven o'clock a. m. on Monday, and every violation of these prohibitions is a misdemeanor.

Derivation: Penal Code, § 355, as amended L. 1893, ch. 709.

ARTICLE 156.

PEDDLERS.

SECTION 1610. Unlicensed peddlers.

§ 1610. Unlicensed peddlers.

A person who is found trading as a peddler without a license, or contrary to the terms of his license, or who refuses to produce his license on demand of an officer or citizen, is guilty of a misdemeanor.

Derivation: Penal Code, § 384e, added L. 1896, ch. 551.

ARTICLE 158.

PERJURY AND SUBORNATION OF PERJURY.

SECTION 1620. Perjury.
1621. Irregularities in the mode of administering oaths no defense.
1622. Swearing falsely in any form, perjury.
1623. Incompetency of witness no defense for perjury.
1624. Witness' knowledge of materiality of his testimony not necessary.
1625. Making of deposition or certificate, when deemed complete.
1626. Statement of that which one does not know to be true.
1627. Contradictory statements under oath.
1628. Summary committal of witnesses who have committed perjury.
1629. Witnesses necessary to prove the perjury may be bound over to appear.
1630. Documents necessary to prove such perjury may be detained.
1631. Witnesses' testimony.
1632. Subornation of perjury defined.
1633. Punishment of perjury and subornation of perjury.
1634. Official interpreters of city court of city of New York.

§ 1620. Perjury.

A person who swears or affirms that he will truly testify, declare, depose, or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed, is true, in an action, or a special proceeding, or upon any hearing, or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may lawfully be administered, and who in such action or proceeding, or on such hearing, inquiry or other occasion, wilfully and knowingly testifies, declares, deposes, or certifies falsely, in any material matter, or states in his testimony, declaration, deposition, affidavit, or certificate, any material matter to be true which he knows to be false, is guilty of perjury.

Derivation: Penal Code, § 96.

Tuttle v. People (1867), 36 N. Y. 431; Wood v. People (1874), 59 N. Y. 117, rev'g 1 Hun, 381, 3 Th. & C. 506; People v. Christopher (1875), 4 Hun, 805; Harris v. People (1876), 64 N. Y. 148, aff'g 4 Hun 1, 6 Th. & C. 206; Lambert v. People (1879), 76 N. Y. 220, 32 Am. Rep. 293; 6 Abb. N. C. 181, rev'g 14 Hun, 512; Dempsey v. People (1880), 20 Hun, 261; O'Reilly v. People (1881), 86 N. Y. 154, 40 Am. Rep. 525, rev'g 1 Hun, 460, 3 Th. & C. 787; People v. Grimshaw (1884), 33 Hun, 505, 2 N. Y. Cr. 390; *People* v. Courtney (1884), 94 N. Y. 490; People v. Stone

(1884), 32 Hun, 41; People v. Bowe (1885), 3 N. Y. Cr. 149; People v. Dishler (1885), 38 Hun, 175, 4 N. Y. Cr. 188; Nathans v. Hope (1885), 100 N. Y. 615, rev'g 5 Civ. Proc. Rep. 401; People v. Bowe (1885), 34 Hun, 528, 3 N. Y. Cr. 159; Byrnes v. Byrnes (1886), 102 N. Y. 4; Kane v. City of Brooklyn (1889), 114 N. Y. 591; People v. Williams (1896), 149 N. Y. 1, aff'g 92 Hun, 354, 36 N. Y. Supp. 511; Krauskopf v. Tallman (1899), 38 App. Div. 273, 56 N. Y. Supp. 967; People v. Collins (1901), 57 App. Div. 257, 68 N. Y. Supp. 151; People v. Doody (1902), 172 N. Y. 166, 17 N. Y. Cr. 69, aff'g 72 App. Div. 372, 76 N. Y. Supp. 606, 16 N. Y. Cr. 476; People v. Martin (1902), 77 App. Div. 396, 401, 79 N. Y. Supp. 340, rev'g 38 Misc. 67, 69, aff'd 175 N. Y. 317;People ex rel. Madigan v. Sturgis (1905), 110 App. Div. 1, 2, 96 N. Y. Supp. 1046; People v. Ellenbogen (1906), 114 App. Div. 184, 99 N. Y. Supp. 897, 20 Crim. Rep. 265; People v. Davis (1907), 122 App. Div. 569, 107 N. Y. Supp. 426, aff'd 191 N. Y. (memo.); People v. Tatum (1908), 60 Misc. 314; see also Bragle v. People, 10 Abb. N. C. 300; People v. Burden, 9 Barb. 467; Case v. People, 6 Abb. N. C. 152, 76 N. Y. 242; People v. Clements, 11 N. Y. St. 384; Geston v. People, 4 Lans. 487, 61 Barb. 35; Gilbert's case, 1 City Hall Rec. 163; Johnson's case, 1 C. H. Rec. 21; People v. Lambert, 6 Abb. N. C. 181, 14 Hun, 512; People v. Link, 4 N. Y. Supp. 435, 6 N. Y. Cr. 185; People v. McKinney, 3 Park. 510; Merritt's case, 4 C. H. Rec. 58; People ex rel. Ostrander v. Chapin, 7 N. Y. St. 209, aff'd 105 N. Y. 309; Pendergrast case, 3 City Hall Rec. 11; Pratt v. Price, 11 Wend. 127; People v. Robertson, 3 Wheel. Cr. Cas. 183; Tomlinson's case, 4 City Hall Rec. 125; People v. Townsend, 5 How. Pr. 315; People v. Tracy, 9 Wend. 265; People v. Travis, 4 Park. 213; People v. Vail, 57 How. 81, 6 Abb. N. C. 206; Van Steenburgh v. Kortz, 10 Johns. 167; Wickoff v. Humphrey, 1 Johns. 498; Wood's case, 4 City Hall Rec. 130; State v. Henderson, 90 Ind. 408; Com. v. Grant, 16 Mass. 17; State v. Terry, 30 Mo. 368; State v. Knox, 61 N. C. 312; Com. v. Edison, 38 Alb. L. J. 337; Woods v. Ross, 28 Daily Reg. 265; Wilson v. Nations, 5 Yerg. 211; Com. v. Brady, 5 Gray, 78; Reg. v. Schlesinger, 10 Ad. & El. (N. S.) 670.

§ 1621. Irregularities in the mode of administering oaths no defense.

It is no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner. The term "oath," includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

Derivation: Penal Code, § 97.

People v. Cook (1853), 8 N. Y. 84, 14 Barb. 287; Case v. People (1879), 76 N. Y. 242, rev'g 14 Hun, 503; O'Reilly v. People (1881), 86 N. Y. 154, rev'g 61 How. Pr. 3; People v. Nolte (1897), 19 Misc. 674, 44 N. Y. Supp. 443, 12 N. Y. Cr. 252; see also Fryatt v. Linde, 3 Edw. 239; State v. Chyo Chaigh, 92 Mo. 395.

§ **1622. Swearing falsely in any form, perjury.**

A person swearing, affirming, or declaring, in any form, where an oath is authorized by law, is lawfully sworn, and is guilty of perjury, in a case where he would be guilty of the same crime, if he had sworn by laying his hand upon the Gospels.

Derivation: Code Civil Pro., § 851, as amended L. 1899, ch. 340.

§ **1623. Incompetency of witness no defense for perjury.**

It is no defense to a prosecution for perjury that the defendant was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was permitted to give such testimony or make such deposition or certificate.

Derivation: Penal Code, § 98.

Chamberlain v. People (1861), 23 N. Y. 85; People v. Bowe (1885), 34 Hun, 528, 3 N. Y. Cr. 151; People v. Trumpbour (1892), 64 Hun, 346, 19 N. Y. Supp. 331.

§ **1624. Witness' knowledge of materiality of his testimony not necessary.**

It is no defense to a prosecution for perjury that the defendant did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have affected such proceeding.

Derivation: Penal Code, § 99.

Wood v. People (1874), 59 N. Y. 117, rev'g 1 Hun, 381, 3 Th. & C. 506; see also People v. Grimshaw, 20 Week. Dig. 116, 2 N. Y. Cr. 390.

§ **1625. Making of deposition or certificate, when deemed complete.**

The making of a deposition or certificate is deemed to be complete, within the provisions of this article, from the time when it is delivered by the defendant to any other person with intent that it be uttered or published as true.

Derivation: Penal Code, § 100.

People v. Williams (1896), 149 N. Y. 1, aff'g 92 Hun, 354, 36 N. Y. Supp. 511; Kane v. City of Brooklyn (1889), 114 N. Y. 591; People v. O'Reilly, *61 How. Pr.* 3, rev'd 86 N. Y. 154; People v. Allen, 9 N. Y. St. 627.

§ 1626. Statement of that which one does not know to be true.

An unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false.

Derivation: Penal Code, § 101.

People v. Dishler (1885), 38 Hun, 175, 4 N. Y. Cr. 190; People v. Doody (1902), 72 App. Div. 372, 383, 76 N. Y. Supp. 606, aff'd 172 N. Y. 166, 16 N. Y. Cr. 479.

§ 1627. Contradictory statements under oath.

In any prosecution for perjury the falsity of the testimony or statement set forth in the indictment shall be presumptively established by proof that the defendant has testified, declared, deposed or certified under oath to the contrary thereof in any other written testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed.

Derivation: Penal Code, § 101a, added L. 1906, ch. 324.

§ 1628. Summary committal of witnesses who have committed perjury.

Where it appears probable to a court of record that a person, who has testified before it in an action or proceeding in that court, has committed perjury in any testimony so given, the court may immediately commit him, by an order or process for that purpose, to prison, or take a recognizance, with sureties, for his appearing and answering to an indictment for perjury.

Derivation: Penal Code, § 102.

People v. Hayes (1893), 140 N. Y. 484, 23 L. R. A. 830, aff'g 70 Hun, 111, 24 N. Y. Supp. 194.

§ 1629. Witnesses necessary to prove the perjury may be bound over to appear.

In a case specified in the last section, the court may bind over witnesses to establish the perjury, to appear at the proper court to testify before a grand jury, and also upon the trial, in case an indictment is found for the perjury. It must cause immediate notice of any such commitment or recognizance, with the names of

the witnesses so bound over, to be given to the district attorney of the county.

Derivation: Penal Code, § 103.

People v. Stone (1884), 32 Hun, 41, 2 N. Y. Cr. 446; People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 347, 55 N. Y. Supp. 472, 13 N. Y. Cr. 406.

§ 1630. Documents necessary to prove such perjury may be detained.

In such a case, if a paper or document, produced by either party, is deemed by the court necessary to be used in the prosecution for the perjury, the court may detain the same, and direct it to be delivered to the district attorney.

Derivation: Penal Code, § 104.

§ 1631. Witnesses' testimony.

The sections of this chapter which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in a criminal proceeding, do not forbid such evidence being proved against such person upon any charge of perjury committed in such examination.

Derivation: Penal Code, § 712.

People v. Sharp (1887), 107 N. Y. 440, rev'g 45 Hun, 460.

§ 1632. Subornation of perjury defined.

A person, who wilfully procures or induces another to commit perjury, is guilty of subornation of perjury.

Derivation: Penal Code, § 105.

People v. Evans (1869), 40 N. Y. 1; People v. Moett (1880), 23 Hun, 60; In re Eldridge (1880), 82 N. Y. 161; Stratton v. People (1880), 81 N. Y. 629; People v. Van Tassel (1898), 156 N. Y. 561, aff'g 26 App. Div. 445, 50 N. Y. Supp. 53; McCoy v. Munro (1902), 76 App. Div. 435, 439, 78 N. Y. Supp. 849; People v. Gagliardi (1908), 59 Misc. 655, 111 N. Y. Supp. 395.

§ 1633. Punishment of perjury and subornation of perjury.

Perjury and subornation of perjury are each punishable as follows:

1. When the perjury is committed upon the trial of an indictment for felony, by imprisonment for a term not exceeding twenty *years;*

2. In any other case, by imprisonment for a term not exceeding ten years.

Derivation: Penal Code, § 106, as amended L. 1892, ch. 662.

People v. Hayes (1893), 140 N. Y. 484, aff'g 70 Hun, 111, 24 N. Y. Supp. 194.

§ **1634. Official interpreter of city court of city of New York.** If an official interpreter of the city court of the city of New York, knowingly and wilfully, falsely interprets any evidence, matter or thing, between a witness and the court, or a justice thereof, in the course of an action or special proceeding, he is guilty of perjury.

Derivation: Code Civil Pro., § 334, as amended L. 1907, ch. 707.

ARTICLE 160.

POOR PERSONS.

SECTION 1650. Unlawful removal of poor person.

§ 1650. Unlawful removal of poor person.

Any person who shall send, remove or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person, from any city, town or county, to any other city, town or county without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county, from which he is so sent, removed or brought or enticed to remove, shall be guilty of a misdemeanor, and on conviction, shall be imprisoned not exceeding six months, or fined not exceeding one hundred dollars, or both.

Derivation: Penal Code, § 675a, added L. 1896, ch. 550.

ARTICLE 162.

PRISONERS.

SECTION 1690. Definitions.
1691. Communication with prisoners prohibited.
1692. Rescue of a prisoner.
1693. Escaping prisoner may be recaptured.
1694. Prisoner escaping.
1695. Attempt to escape from state prison.
1696. Aiding escape.
1697. Suffering prisoner to escape.
1698. Concealing escaped prisoner.

§ 1690. Definitions.

Definition of prison.—The term, "prison," as used in this article, means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest.

Definition of prisoner.—The term, "prisoner," as used in this article, means any person held in custody under process of law, or under lawful arrest.

Derivation: Penal Code, §§ 92, 93.

People v. Johnson (1887), 46 Hun, 667, 7 N. Y. Cr. 402, aff'd 110 N. Y. 134; see also State v. Beebe, 13 Kans. 589; Com. v. Felburn, 119 Mass. 297.

§ 1691. Communication with prisoners prohibited.

A person who:

1. Not being authorized by law visits any state prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime or communicates with any prisoner therein without the consent of the agent or warden, superintendent, keeper, sheriff or other person having charge thereof or without such consent brings into or conveys out of a state prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, any letter, information or writing to or from any prisoner; or,

2. Conveys into or takes from such prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, or who personally or through any other person or persons gives, sells, furnishes or otherwise delivers to any prison or prisoners in custody any drug, liquor or any article

prohibited by law or by the rules of the superintendent, keeper, sheriff, board of managers or other person, or official having charge or control thereof,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 160, as amended L. 1893, ch. 692; L. 1903, ch. 333.

§ 1692. Rescue of a prisoner.

A person who, by force or fraud, rescues a prisoner from lawful custody, or from an officer or other person having him in lawful custody, is guilty of a felony, if the prisoner was held upon a charge, commitment, arrest, conviction, or sentence of felony; and if the prisoner was held upon a charge, arrest, commitment, conviction, or sentence for misdemeanor, the rescuer is guilty of a misdemeanor.

Derivation: Penal Code, § 82.

Com. v. Filburn, 119 Mass. 297; State v. Murray, 15 Me. 100; People v. Rathbun, 21 Wend. 508; People v. Rose, 12 Johns. 339; People v. Washburn, 10 Johns. 160.

§ 1693. Escaping prisoner may be recaptured.

A prisoner, in custody under sentence of imprisonment for any crime, who escapes from custody, may be recaptured and imprisoned for a term equal to that portion of his original term of imprisonment which remained unexpired upon the day of his escape.

Derivation: Penal Code, § 84.

Haggerty v. People (1873), 53 N. Y. 476; rev'g 6 Lans. 332; see also Matter of Edwards, 25 Alb. L. J. 68.

§ 1694. Prisoner escaping.

A prisoner who, being confined in a prison, or being in lawful custody of an officer or other person, by force or fraud escapes from such prison or custody, is guilty of felony if such custody or confinement is upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor if such custody or confinement is upon a charge, arrest, commitment or conviction for a misdemeanor.

Derivation: Penal Code, § 85.

People v. Genet (1874), 59 N. Y. 80, 17 Am. Rep. 315; People v. Sharkey (1874), 1 Hun, 300; People v. Johnson (1887), 46 Hun, 667; 110 N. Y.

141; Keenan v. O'Brien (1889), 53 Hun, 30, 5 N. Y. Supp. 490; Matter of O'Byrne (1890), 55 Hun, 438, 8 N. Y. Supp. 676; People v. Sickles (1898), 26 App. Div. 470, 50 N. Y. Supp. 377, 13 N. Y. Cr. 138; People v. Flanigan (1903), 174 N. Y. 357, 17 Crim. Rep. 310; see also Warwick v. State, 73 Ala. 486, 49 Am. Rep. 59; People v. Redinger, 55 Cal. 290, 36 Am. Rep. 32; M'Gowan v. People, 104 Ill. 100, 44 Am. Rep. 87; Sargent v. State, 96 Ind. 93, 5 Crim. L. Mag. 709; Allen v. Georgia, 166 U. S. 138; Smith v. United States, 94 U. S. 97; Wilson v. Com., 10 Bush. 526, 19 Am. Rep. 76; State v. Davis, 33 Am. Rep. 563.

§ 1695. Attempt to escape from state prison.

A prisoner confined in a state prison for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

Derivation: Penal Code, § 86.

§ 1696. Aiding escape.

A person who, with intent to effect or facilitate the escape of a prisoner, whether the escape is effected or attempted or not, enters a prison, or conveys to a prisoner any information, or sends into a prison any disguise, instrument, weapon, or other thing, is guilty of a felony, if the prisoner is held upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor, if the prisoner is held upon a charge, arrest, commitment, or conviction for a misdemeanor.

A person who aids or assists a prisoner in escaping, or attempting to escape, from the lawful custody of a sheriff, or other officer or person, is guilty of a misdemeanor, if the prisoner is held under arrest, commitment, or conviction for a misdemeanor, or upon a charge thereof; and of a felony if the prisoner is held under an arrest, commitment, or conviction for a felony, or upon a charge thereof.

Derivation: Penal Code, §§ 87, 88.

Westbrook v. New York Sun Assn. (1901), 58 App. Div. 562, aff'g 32 Misc. 39, 69 N. Y. Supp. 266; People v. Buckley (1904), 91 App. Div. 586, 87 N. Y. Supp. 191, 18 Crim. Rep. 216; see also People v. Rose, 12 Johns. 339; People v. Tompkins, 9 Johns. 70.

§ 1697. Suffering prisoner to escape.

A sheriff, or other officer or person, who allows a prisoner, lawfully in his custody, in any action or proceeding, civil or criminal, or in any prison under his charge or control, to escape

or go at large, except as permitted by law, or connives at or assists such escape, or omits an act or duty whereby such escape is occasioned, or contributed to, or assisted, is

1. If he corruptly and wilfully allows, connives at or assists the escape, guilty of a felony;

2. In any other case, is guilty of a misdemeanor.

An officer who is convicted of the offense specified in the first subdivision of this section, forfeits his office, and is forever disqualified to hold any office, or place of trust, honor or profit, under the constitution or laws of this state.

Derivation: Penal Code, §§ 89, 90.

§ 1698. Concealing escaped prisoner.

A person who knowingly or wilfully conceals, or harbors for the purpose of concealment, a person who has escaped or is escaping from custody, is guilty of a felony if the prisoner is held upon a charge or conviction of felony, and of a misdemeanor if the person is held upon a charge or conviction of misdemeanor.

Derivation: Penal Code, § 91.

People v. Egner (1903), 175 N. Y. 419, 17 Crim. Rep. 394.

ARTICLE 164.

PRIZE-FIGHTING AND SPARRING.

SECTION 1710. Prize-fighting and sparring.
1711. What constitutes a challenge.
1712. Betting or stakeholding on fight.
1713. Fight out of state.
1714. Place of trial.
1715. Apprehension of persons about to fight.
1716. Witnesses' privilege.

§ 1710. Prize-fighting and sparring.

A person who, within this state, engages in, instigates, aids, encourages or does any act to further a contention, or fight, without weapons, between two or more persons, or a fight commonly called a ring or prize-fight, either within or without the state, or who engages in a public or private sparring exhibition, with or without gloves, within the state, at which an admission fee is charged or received, either directly or indirectly, or who sends or publishes a challenge, or acceptance of a challenge for such a contention, exhibition or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention, exhibition or fight, is guilty of a misdemeanor.

Derivation: Penal Code, § 458, as amended L. 1896, ch. 301; L. 1900, ch. 270.

People v. Johnson (1897), 22 Misc. 150, 49 N. Y. Supp. 382, 12 N. Y. Cr. 546; People v. Finucan (1903), 80 App. Div. 407, 17 N. Y. Cr. 254, 90 N. Y. Supp. 929; see also People v. Fitzsimmons, 34 N. Y. Supp. 1102, 69 N. Y. St. 191.

§ 1711. What constitutes a challenge.

Any words spoken or written, or any signs uttered or made to any person, expressing or implying, or intended to express or imply a desire, request, invitation or demand to engage in any fight, such as is mentioned in section seventeen hundred and ten, are to be deemed a challenge within the meaning of that section.

Derivation: Penal Code, § 459.

People v. Barker, 2 Wheel. Car. Cas. 19; Barker v. People, 3 Cow. 386, 20 Johns. 457; Norton's Case, 3 City Hall Rec. 90; Wood's Case, 3 City Hall Rec. 139.

§ 1712. Betting or stakeholding on fight.

A person who bets, stakes, or wagers money or other property, upon the result of such a fight or encounter, or who holds or undertakes to hold money or other property so staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

Derivation: Penal Code, § 460.

People ex rel. Collins v. McLaughlin (1908), 128 App. Div. 614.

§ 1713. Fight out of state.

A person who leaves the state, with intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

Derivation: Penal Code, § 461.

§ 1714. Place of trial.

An indictment for an offense, specified in the last section, may be tried in any county within the state.

Derivation: Penal Code, § 462.

§ 1715. Apprehension of persons about to fight.

A magistrate having power to issue warrants in criminal cases, to whom it is made to appear that there is reasonable ground to apprehend that an offense specified in sections seventeen hundred and ten, seventeen hundred and twelve and seventeen hundred and thirteen is about to be commited within his jurisdiction, or by any person being within his jurisdiction, must issue his warrant to a sheriff or constable, or other proper officer, for the arrest of the person so about to offend. Upon a person being arrested and brought before him by virtue of the warrant, he must inquire into the matter, and, if it appears that there is reasonable ground to believe that the person arrested is about to commit any offense, the magistrate must require him to give a bond to the people of the state in such a sum, not exceeding one thousand dollars, as the magistrate may fix, either with or without

sureties in his discretion, conditioned that such person will not, for one year thereafter, commit any such offense.

If the person arrested does not furnish a bond, within a time fixed by the magistrate, the later must commit him to the county jail, there to remain until discharged by a court of record having criminal jurisdiction. A person so committed may, at any time, be discharged upon a writ of habeas corpus, upon his executing the bond required by the committing magistrate. If the bond is required to be given with one or more sureties, the surety or sureties must be approved by the officer taking the same.

Derivation: Penal Code, §§ 463, 464.

People v. Johnson (1897), 22 Misc. 150, 49 N. Y. Supp. 382, 12 N. Y. Cr. 546.

§ 1716. Witnesses' privilege.

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

Derivation: Penal Code, § 469.

ARTICLE 166.
PUBLIC HEALTH.

SECTION 1740. Wilful violation of health laws.
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1760. Wilfully poisoning food.
1761. Acts of intoxicated physicians.
1762. Misconduct of veterinary surgeons.
1763. Illegal practice of embalming.

§ 1740. Wilful violation of health laws.

1. A person who wilfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor.

2. A person who wilfully violates any provision of the health laws, or any regulation lawfully made or established by any public officer or board under authority of the health laws the punishment for violating which is not otherwise prescribed by those laws, or by this chapter, is punished by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars or by both.

Derivation: Penal Code, § 397, as amended L. 1905, ch. 443.

Regan v. Fosdick (1897), 19 Misc. 494, 43 N. Y. Supp. 1102; Robinson v. Supreme Commandery (1902), 38 Misc. 102, 77 N. Y. Supp. 111; People v. VanFradenburgh (1903), 81 App. Div. 259, 80 N. Y. Supp. 834, 17 N. Y. *Cr.* 268.

§ 1741. Obstructing health officer in performance of his duty.

A person who wilfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

Derivation: Penal Code, § 396.

Regan v. Fosdick (1897), 19 Misc. 489, 43 N. Y. Supp. 1102.

§ 1742. Omitting to label drugs, or labeling them wrongly.

Any person, who, in putting up any drug, medicine, or food or preparation used in medical practice, or making up any prescription, or filling any order for drugs, medicines, food or preparation puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitutes or dispenses a different article for or in lieu of any article prescribed, ordered, or demanded, or puts up a greater or less quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered, or demanded, or otherwise deviates from the terms of the prescription, order, or demand by substituting one drug for another, is guilty of a misdemeanor; provided, however, that, except in the case of physicians' prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other article in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. Upon a second conviction for a violation of this section the offender must be sentenced to imprisonment, for a term of not less than ten days nor more than one year, and to the payment of a fine of not less than ten dollars nor more than five hundred dollars. The third conviction of a violation of any of the provisions of this section, in addition to rendering the offender liable to the penalty prescribed by law for a misdemeanor; shall forfeit any right which he may possess under the law of this state at the time of such conviction, to engage as proprietor, agent, employee or otherwise, in the business of an apothecary, pharmacist, or druggist, or to compound, prepare or dispense prescriptions or orders for drugs, medicines or foods or preparations used in

medical practice; and the offender shall be by reason of such conviction disqualified from engaging in any such business as proprietor, agent, employee or otherwise or compounding, preparing or dispensing medical prescriptions or orders for drugs, medicines, or foods or preparations used in medical practice.

This section shall not affect or impair any liability, penalty or punishment under the provisions of section four hundred and one of the penal code as the same existed prior to September first, nineteen hundred and seven, but the same may be enforced, prosecuted or inflicted as fully and to the same extent as though this section had not been passed; and all actions civil or criminal instituted under or by virtue of said section as the same existed prior to July nineteenth, nineteen hundred and seven, and pending immediately prior to September first, nineteen hundred and seven, may be prosecuted and defended to final effect in the same manner as though this section had not been enacted.

The provisions of this section shall not apply to the practice of a practitioner of medicines who is not the proprietor of a store for the dispensing or retailing of drugs, medicines and poisons, or who is not in the employ of such a proprietor, and shall not prevent practitioners of medicine from supplying their patients with such articles as they may deem proper, and except as to the labeling of poisons shall not apply to the sale of medicines or poisons at wholesale when not for the use or consumption of the purchaser; provided, however, that the sale of medicines or poisons at wholesale shall continue to be subject to such regulations as from time to time may be lawfully made by the board of pharmacy or by any competent board of health.

Derivation: Penal Code, § 401, as amended L. 1905, ch. 442; L. 1907, ch. 649; Penal Code, § 403, added L. 1905, ch. 442; second paragraph is L. 1907, ch. 649, § 2.

§ 1743. Selling poison without labeling, and recording the sale.

It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed, to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of

such poisons printed or written thereupon in plain, legible characters, which schedules are as follows, to wit:

Schedule A. Arsenic, cyanide or potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce.

Schedule B. Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less, and such other poisons as the state board of pharmacy, under the authority given to it by the public health law, may from time to time add to either of said schedules. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines or poisons on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer enclosure of an original package containing any of the articles enumerated under said schedule A, a suitable label or brand in red ink with the word "poison" upon it.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.

Derivation: Penal Code, § 402, as amended L. 1905, ch. 442.

§ 1744. Penalty for violation of public health law.

Any person who violates any provision of article eleven of the public health law, for which no other penalty is imposed, is guilty of a misdemeanor.

Suffolk County v. Shaw (1897), 21 App Div. 146, 47 N. Y. Supp. 349; People v. Rontey (1889), 6 N. Y. Cr. 249, 21 N. Y. St. 175, 4 N. Y. Supp. 235, aff'd 117 N. Y. 624.

Derivation: Penal Code, § 404, added L. 1905, ch. 442.

§ 1745. Regulations as to prescriptions of opium and morphine.

A person who, except on the written or verbal order of a physician, refills more than once perscriptions containing opium, morphine or preparations of either, in which the dose of opium exceeds one-fourth grain, or morphine one-twentieth grain, is guilty of a misdemeanor.

Derivation: Penal Code, § 405a, added L. 1893, ch. 692, and renumbered § 405; L. 1905, ch. 442.

§ 1746. Sale of cocaine or eucaine.

It shall be unlawful for any person to sell, furnish or dispose of alkaloid cocaine or its salts, or alpha or beta eucaine or their salts or any admixture of cocaine or eucaine, except upon the written prescription of a duly registered physician, which prescription shall be retained by the person who dispenses the same, shall be filled but once and of which no copy shall be taken by any person; except, however, that such alkaloid cocaine or its salts, and alpha or beta eucaine or their salts may lawfully be sold at wholesale upon the written order of a licensed pharmacist or licensed druggist, duly registered practicing physician, licensed veterinarian or licensed dentist provided that the wholesale dealer shall affix or cause to be affixed to the bottle, box, vessel or package containing the article sold, and upon the outside wrapper of the package as originally put up, a label distinctly displaying the name and quantity of cocaine or its salts, alpha or beta eucaine or their salts, sold, and the word "poison" with the name and place of business of the seller, all printed in red ink; and provided also that the wholesale dealer shall before delivering any of the articles make or cause to be made in a book kept for the purpose an entry

of the sale thereof stating the date of sale, the quantity, name and form in which sold, the name and address of the purchaser, and the name of the person by whom the entry is made; and the said book shall be always open for inspection by the proper authorities and shall be preserved for at least five years after the date of the last entry made therein; and provided also that any manufacturer may sell to another manufacturer of the same article, or to a wholesale dealer in drugs, or, a wholesale dealer in drugs may sell to a manufacturer of the same article, or to another wholesale dealer in drugs, alkaloid cocaine or its salts or alpha or beta eucaine or their salts or any admixture of cocaine or eucaine in the original package. Such package shall be labeled as herein provided and shall be securely sealed. Each manufacturer and each wholesale dealer in drugs shall, before the delivery or at the time of the receipt, as the case may be, of any such drug, enter or cause to be entered in a book to be kept by them respectively for that purpose a record of the purchase and sale of such drug stating the date of purchase and the name and address of the person from whom purchased; the date of sale and the name and address of the person to whom sold; the quantity, name and form in which sold and a description of the package or container in which sold and how sealed and there shall also be entered in such book at the place of such record a statement that such drug was sold or purchased, as the case may be, in the original package; that the seals thereon were undamaged and unbroken and the labels were attached thereto as herein provided and were not in any manner defaced or damaged, which statement shall be signed by the person selling such drug and the person purchasing such drug in the books herein required to be kept by them respectively. Any person who sells, furnishes or disposes of alkaloid cocaine or its salts, or alpha or beta eucaine or their salts or any admixture of cocaine or eucaine, upon the written prescription of a duly registered physician, as authorized by this section, shall, at the time of dispensing the same, give to the person to whom the same is sold or furnished a certificate stating the name and address of the person selling or furnishing such drug or mixture, the name and address of the physician upon whose prescription the same is sold or furnished, the date of sale and the amount sold; and the possession by any person, other than a licensed pharmacist, licensed druggist, duly registered practicing physician, licensed veterinarian, licensed dentist, or a wholesale dealer or manufacturer of such drug or mixture, of any such drug or mixture in any quantity whatever without such a certificate or more than ten days after the date of such a certificate, or the possession at any time by any person, other than above excepted, of a quantity of such drug or mixture in excess of the amount stated in such a certificate held by the person on whom such drug or mixture *is discovered at* the time of discovery, *is presumptive evidence of an attempt to sell*, furnish or dispose of the same in *violation of this section*. Any person who violates any of the

provisions of this section shall be guilty of felony punishable by imprisonment of not more than one year or a fine of not more than one thousand dollars, or both. (Amended by L. 1910, ch. 131, in effect Apr. 21, 1910.)

Derivation: Penal Code, § 405a, added L. 1907, ch. 424. Amended by L. 1908, ch. 277.

§ 1747. Careless distribution of medicines, drugs and chemicals.

Any person, firm, or corporation, who distributes, or causes to be distributed, any free or trial samples of any medicine, drug, chemical or chemical compound, by leaving the same exposed upon the ground, sidewalk, porch, doorway, letter-boxes, or in any other manner, that children may become possessed of the same, shall be guilty of a misdemeanor punishable by a fine not exceeding twenty-five dollars for each offense, but this section shall not apply to the direct delivery of any such article to an adult.

Derivation: Penal Code, § 405b, added L. 1903, ch. 494.

§ 1748. Adulterated goods.

A person who:

1. With the intent that the same may be sold as unadulterated or undiluted, adulterates or dilutes wine, milk, distilled spirits or malt liquor, or any drug, medicine, food or drink, for man or beast; or,

2. Knowing that the same has been adulterated or diluted, offers for sale or sells the same as unadulterated or undiluted, or without disclosing or informing the purchaser that the same has been adulterated or diluted, in a case where special provision has not been made by statute, for the punishment of the offense; or,

3. Sells or offers to sell, or stores or transports with intent to sell for any purpose other than cooling beer in casks, ice cut from any canal or from the wide waters or basins of any canal, unless the ice so sold, or offered for sale or stored or transported, is contained in a building, cart, car, sleigh, float or receptacle upon which is plainly marked in roman or capital letters, not less than eight inches square, the words, "canal ice;" or,

4. Who shall adulterate maple sugar, maple syrup or honey, with glucose, cane sugar or syrup, beet sugar or syrup, or any other substance for the purpose of sale, or who shall knowingly sell or offer for sale maple sugar, maple syrup or honey that has been adulterated in any way; or,

5. Violates any provision of section three hundred and ninety of the general business law, relating to canned and preserved food,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 407, as amended L. 1889, ch. 141; L. 1892, ch. 684; subd. 5, added L. 1896, ch. 551.

People v. Cipperly (1885), 101 N. Y. 634, 4 N. Y. Cr. 69, rev'g 37 Hun, 324; People v. Schaffer (1886), 41 Hun, 23; People v. Kerin (1886), 39 Hun, 631; People v. *Arensburg* (1886), 103 N. Y. 388, 105 N. Y. 123, rev'g 40 Hun, 358, 4 N. Y. Cr. 401; *People v. Mahaney* (1886), 41 Hun, 26; People v. Kibler (1887), 106 N. Y. 321; *People v. West* (1887), 106 N. Y. 293, aff'g 44 Hun, 162; People v. Hill

(1887), 44 Hun, 472; People v. Gillson (1888), 109 N. Y. 403; People v. Harris (1890), 123 N. Y. 70; People v. Hodnett (1893), 68 Hun, 343, 22 N. Y. Supp. 809; People v. Girard (1895), 145 N. Y., 105, aff'g 73 Hun, 457, 26 N. Y. Supp. 272; People v. Fox (1896), 4 App. Div. 38, 38 N. Y. Supp. 635; People v. Kellina (1898), 13 N. Y. Cr. 134, 50 N. Y. Supp. 653; People v. Biesecker (1901), 169 N. Y. 53, 59, 88 Am. St. Rep. 534, aff'g. 58 App. Div. 391, 68 N. Y. Supp. 1067; Crossman v. Lurman (1902), 171 N. Y. 329, aff'g 57 App. Div. 393, 68 N. Y. Supp. 311; People v. Windholz (1902), 68 App. Div. 552, 74 N. Y. Supp. 241; People v. Sheriff (1902), 78 App. Div. 46, 79 N. Y. Supp. 783; People v. Laesser (1903), 79 App. Div. 384, 79 N. Y. Supp. 470; see also People v. Bischoff, 14 N. Y. St. 581; People v. Eddy, 12 N. Y. Supp. 628; People v. Fulle, 12 Abb. N. C. 196, 1 N. Y. Cr. 172; People v. Meyer, 60 N. Y. Supp. 415; Com. v. Evans. 132 Mass. 11; Butler v. Chambers, 36 Minn. 69; State v. Addington, 77 Mo. 110; State v. Ah Crew, 76 Nev. 50, 40 Am. Rep. 488; State v. Marshall, 64 N. H. 549, 1 L. R. A. 51; State v. Smyth, 14 R. I. 100, 51 Am. Rep. 344; Com. v. Powell, 127 U. S. 678.

§ 1749. Adulteration of natural fruit juices.

Any person who shall knowingly sell, offer or expose for sale, or give away, any compound or preparation composed, in whole or in part, of any unwholesome, deleterious or poisonous acid, or other unwholesome, deleterious or poisonous substance, as a substitute for the pure, unadulterated and unfermented juice of lemons, limes, oranges, currants, grapes, apples, peaches, plums, pears, berries, quinces, or other natural fruits, representing such compound or preparation to be the pure, unadulterated and unfermented juice of any of such fruits; or who, in the mixing, decoction, or preparation of food or drink, shall knowingly use any such compound or preparation in the place of, or as a substitute for, the pure, unadulterated and unfermented juice of one or more of such fruits, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than two hundred and fifty dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

Derivation: Penal Code, § 407a, added L. 1899, ch. 343.

§ 1750. Disposing of tainted food.

A person who with intent that the same be used as food, drink, or medicine, sells, or offers or exposes for sale, any article whatever which, to his knowledge, is tainted or spoiled, or for any cause unfit to be used as such food, drink, or medicine, is guilty of a misdemeanor.

Derivation: Penal Code, § 408.

Goodrich v. People (1859), 19 N. Y. 574; People v. Parker (1868), 38 N. Y. 85; Hartman v. Sun Printing & Pub. Assoc. (1902), 74 App. Div. 282, 284, 77 N. Y. Supp. 538; People v. Beaman (1905), 102 App. Div. 151, 92 N. Y. Supp. 295, 19 Crim. Rep. 87.

§ 1751. Violations of the agricultural law.

Any person who disregards, disobeys or violates any proclamation, notice, order or regulation, lawfully issued or prescribed by the commissioner of agriculture, for the suppression or prevention of the spread of infectious or contagious diseases among domestic animals, or who violates any of the provisions of sections three hundred and three hundred and four of the agricultural law, is guilty of a misdemeanor.

Derivation: Penal Code, § 408a, added L. 1893, ch. 692, amended L. 1894, ch. 426; L. 1897, ch. 554.

People v. Piat (1897), 19 Misc. 131, 43 N. Y. Supp. 231; People v. Armour (1897), 18 App Div. 584, 46 N. Y. Supp. 317; People v. Beaman (1905), 102 App. Div. 1I51, 92 N. Y. Supp. 295, 19 Crim. Rep. 87.

§ 1752. Having narcotics in possession.

1. A person, other than a duly licensed physician or surgeon engaged in the lawful practice of his profession, who has in his possession any narcotic or anæsthetic substance, compound or preparation, capable of producing stupor or unconsciousness, with intent to administer the same or cause the same to be administered to another, without the latter's consent, unless by direction of a duly licensed physician, is guilty of a felony, punishable by imprisonment in the state prison for not more than ten years.

2. The possession by any person, other than as exempted in the foregoing subdivision, of any such narcotic or anæsthetic substance or compound, concealed or furtively carried on the person, is presumptive evidence of an intent to administer the same or cause the same to be administered in violation of the provisions of this section.

Derivation: Penal Code, § 412, added L. 1897, ch. 42. The original section 412 was repealed L. 1882, ch. 544.

§ 1753. Articles in imitation of food.

A person, who sells or manufactures, exposes or offers for sale as an article of food, any substance in imitation thereof, without

disclosing the imitation by a suitable and plainly visible mark or brand, is guilty of a misdemeanor.

Derivation: Penal Code, § 430.

§ 1754. Putting noisome or unwholesome substances in highway.

A person, who deposits, leaves or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains or carries on, upon or near a public highway or route of public travel, either on the land or on the water, any business, trade or manufacture which is noisome or detrimental to public health, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, or by imprisonment not less than three nor more than six months, or both.

Derivation: Penal Code, § 431.

§ 1755. Obstructing passage of ambulance.

A person, who wilfully stops or obstructs the passage of any ambulance or vehicle used for the transportation of sick or wounded persons or animals upon any public street, highway or place, or who wilfully injures the same, or wilfully drives any vehicle into collision therewith, is guilty of a misdemeanor. All sheriffs, constables and police officers must, when called upon by the persons in charge of such ambulance or vehicle, aid in placing sick or wounded persons or animals therein, and in enforceing the provisions of this section.

Derivation: Penal Code, § 432.

§ 1756. Exposing person affected with a contagious disease in a public place.

A person, who wilfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

Derivation: Penal Code, § 434.

Matter of Boyce (1904), 43 Misc. 297, 88 N. Y. Supp. 841.

§ 1757. Spraying fruit trees with poison.

Any person who shall spray with, or apply in any way poison

or any poisonous substance, to fruit trees while the same are in blossom, is guilty of a misdemeanor, punishable by a fine of not less than ten dollars nor more than fifty dollars for each offense; provided, however, that nothing in this section shall prevent the directors of the experimental stations at Ithaca and Geneva from conducting experiments in the application of poison and spraying mixtures to fruit trees while in blossom.

Derivation: L. 1898, ch. 325.

§ 1758. Contamination of salt wells.

A person who wilfully places, introduces or causes to flow or enter into any spring, brook or body of water, which is used in the manufacture of salt, or into any salt well, or salt mine, or into any cavity or reservoir beneath the surface of the earth from which salt or brine is taken or used in the manfacture of salt, any impure or deleterious substance or thing whatsoever, which is liable to pollute the waters thereof, or the brine or salt taken or manufactured therefrom, provided that this act shall not interfere with any existing system of drainage or sewerage, is punishable by imprisonment in a penitentiary or state prison for not more than five years or by a fine of not more than two thousand dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 447e, added L. 1901, ch.528.

§ 1759. Throwing gas tar or refuse into public waters.

A person, who throws or deposits gas tar, or the refuse of a gas house or gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor.

Derivation: Penal Code, § 390.

Mayor, etc. v. Furgueson (1881), 23 Hun, 594.

§ 1760. Wilfully poisoning food.

A person who wilfully mingles poison with any food, drink or medicine, intended or prepared for the use of human beings, and a person who wilfully poisons any spring, well or reservoir of water, is punishable by imprisonment in a state prison not exceeding ten years, or in a county jail not exceeding

one year, or by a fine not exceeding five hundred dollars, or both such fine and imprisonment.

Derivation: Penal Code, § 358.

§ 1761. Acts of intoxicated physicians.

A physician or surgeon, or person practicing as such, who, being in a state of intoxication, administers any poison, drug or medicine, or does any other act as a physician or surgeon, to another person, by which the life of the latter is endangered, or his health seriously affected, is guilty of a misdemeanor.

Derivation: Penal Code, § 357.

§ 1762. Misconduct of veterinary surgeons.

A person who presents to a county clerk for registration as a practitioner of veterinary medicine or surgery any diploma or certificate fraudulently obtained or practices veterinary medicine and surgery without complying with or contrary to law, is guilty of a misdemeanor. This section shall not be constructed to prohibit students from prescribing under the supervision of preceptors, or to prohibit gratuitous services in case of emergency, or the services of an authorized practitioner of a neighboring state when incidentally called into requisition.

Derivation: Penal Code, § 356, added L. 1893, ch. 692.

People v. Nyce (1884), 3 N. Y. Cr. 50, 34 Hun, 298; Wiel v. Cowles (1887), 45 Hun, 307; People v. Fulda (1889), 52 Hun, 65, 4 N. Y. Supp. 945, 7 N. Y. Cr. 1, 4, note, 4 N. Y. Cr. 139.

§ 1763. Illegal practice of embalming.

Any person violating any provision of section two hundred and ninety-eight of the public health law, or any of the rules and regulations in reference to the business and practice of embalming human dead bodies, made and duly approved as by article fourteen of said public health law prescribed, is guilty of a misdemeanor.

Derivation: L. 1898, ch. 555, § 10.

ARTICLE 168.

PUBLIC JUSTICE.

SECTION 1780. Disclosure of deposition taken by a magistrate.
1781. Disclosure of depositions returned by grand jury with presentment.
1782. Disclosing fact of indictment having been found.
1783. Grand juror disclosing what transpired before the grand jury.
1784. Stenographer disclosing evidence taken before grand jury.
1785. Instituting suit in false name.
1786. Maliciously procuring search warrant.
1787. Combinations to resist execution of process.
1788. Re-confining person discharged upon writ.
1789. Concealing persons entitled to writ of deliverance.
1790. Liquors not to be sold in court-house during court.
1791. Bringing liquors into or selling within jails prohibited.
1792. Misconduct of officer having charge of jurors.

§ 1780. Disclosure of deposition taken by a magistrate.

A magistrate or clerk of any magistrate who wilfully permits any deposition taken on an examination of a defendant before such magistrate, and remaining in the custody of such magistrate or clerk, to be inspected by any person, except a judge of a court having jurisdiction of the offense, the attorney-general, the district attorney of the county and his assistants, the complainant and his counsel, and the defendant and his counsel, is guilty of a misdemeanor.

Derivation: Penal Code, § 145, as amended L. 1888, ch. 145.

§ 1781. Disclosure of depositions returned by grand jury with presentment.

A clerk of any court who wilfully permits any deposition returned by a grand jury and filed with such clerk, to be inspected by any person, except the court, the deputies or assistants of such clerk, and the district attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

Derivation: Penal Code, § 146.

Smith v. Botens, 13 N. Y. Supp. 224.

§ 1782. Disclosing fact of indictment having been found.

A judge, grand juror, district attorney, clerk, or other officer,

who, except in the due discharge of his official duty, discloses, before an accused person is in custody, the fact of an indictment having been found or ordered against him, is guilty of a misdemeanor.

Derivation: Penal Code, § 156.

§ 1783. Grand juror disclosing what transpired before the grand jury.

A grand juror who, except when lawfully required by a court or officer wilfully discloses:

1. Any evidence adduced before the grand jury; or,

2. Anything which he himself or any other member of the grand jury said, or in what manner he or any other grand juror voted, upon any matter before them,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 157.

People v. Steinhardt (1905), 47 Misc. 252, 256, 93 N. Y. Supp. 1026.

§ 1784. Stenographer disclosing evidence taken before grand jury.

A stenographer appointed to take testimony given before a grand jury who permits any person other than the district attorney to take a copy of such testimony or of any portion thereof or to read the same or any portion thereof, except on the written order of the court, is guilty of a misdemeanor.

Derivation: Penal Code, § 157a, added L. 1893, ch. 692.

People v. Steinhardt (1905), 47 Misc. 257, 93 N. Y. Supp. 1026.

§ 1785. Instituting suit in false name.

A person who institutes or prosecutes an action or other proceeding in the name of another without his consent and contrary to the statutes, is guilty of a misdemeanor, punishable by imprisonment not exceeding six months.

Derivation: Penal Code, § 158.

People v. Schermerhorn (1908), 59 Misc. 149, 112 N. Y. Supp. 222.

§ 1786. Maliciously procuring search warrant.

A person who maliciously, and without probable cause, pro-

cures a search warrant to be issued and executed, is guilty of a misdemeanor.

Derivation: Penal Code, § 159.

§ 1787. Combinations to resist execution of process.

A person, who enters into a combination with another to resist the execution of any legal process, or other mandate of a court of competent jurisdiction, under circumstances not amounting to a riot, is guilty of a misdemeanor.

A person who leaves the state, with intent to elude any provision of this section, or to commit any act without the state, which is prohibited by this section, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this section, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this section upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

Derivation: First par. Penal Code, § 457; second par. Penal Code, § 461; third par. Penal Code, § 469.

§ 1788. Re-confining person discharged upon writ.

A person, who either solely, or as a member of a court, or in the execution of a judgment, order or process, knowingly re-commits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from imprisonment upon a writ of habeas corpus, or certiorari, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or by imprisonment not exceeding six months, or both; and in addition to the punishment prescribed therefor, he forfeits to the party aggrieved, one thousand two hundred and fifty dollars to be recovered in a civil action.

Derivation: Penal Code, § 379.

Matter of Felton, 16 How. Pr. 303; Yates' Case, 3 Johns. 318, 6 Johns. 337; Matter of Fitz, 64 Mo. 205, 27 Am. Rep. 218; Matter of Crow, 60 Wis. 349, 30 Alb. L. J. 210.

§ 1789. Concealing persons entitled to writ of deliverance.

A person having in his custody or power or under his restraint, one who would be entitled to a writ of habeas corpus or certiorari, or for whose relief a writ of habeas corpus or certiorari has been issued who, with intent to elude the service of such writ, or to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who without lawful excuse refuses to produce him, is guilty of a misdemeanor, punishable as prescribed in the last section.

Derivation: Penal Code, § 380.

Rising v. Dodge, 2 Duer, 42.

§ 1790. Liquors not to be sold in court-house during court.

Strong,spirituous, or fermented liquor, or wine, shall not, on any pretense whatever, be sold within a building established as a court-house for holding courts of record, while such a court is sitting herein. A person violating this section is guilty of a misdemeanor.

Derivation: Code of Civ. Proc., §§ 32, 33.

§ 1791. Bringing liquors into or selling within jails prohibited.

A person who brings into or sells in a jail, strong, spirituous, fermented, or other liquor, or wine, contrary to the provisions of sections three hundred and forty-nine or three hundred and fifty of the prison law; or a sheriff, keeper of a jail, assistant keeper, or an officer, or person employed in or about a jail, who knowingly suffers liquor or wine to be sold or used therein, contrary to either of said sections, is guilty of a misdemeanor, and shall be punished accordingly. A conviction also operates as a forfeiture of his office.

Derivation: Code Civ. Proc., § 130.

§ 1792. Misconduct of officer having charge of jurors.

An officer to whose charge any juror is committed by a court or magistrate, who negligently or wilfully permits such juror, without leave of the court or magistrate:

1. To receive any communication from any person; or,
2. To make any communication to any person; or,

3. To obtain or receive any book or paper, or refreshment; or,
4. To leave the jury room,

Is guilty of a misdemeanor.

The word "juror" as used in this section includes a talesman, and extends to jurors in all courts whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

Derivation: Penal Code, § 77; last par. Penal Code, § 81.

ARTICLE 170.

PUBLIC OFFICES AND OFFICERS.

SECTION 1820. Acting in a public office without having qualified.
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1875. Violation by sheriff of certain provisions relating to prisoners.
1876. Misdemeanor for judge, justice or magistrate to permit any but attorneys to practice in his court.

§ 1820. Acting in a public office without having qualified.

A person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, as prescribed by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 42, as amended L. 1893, ch. 692.

Foot v. Stiles (1874), 57 N. Y. 399.

§ 1821. Acts of officer de facto.

The last section must not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where persons other than himself are interested in maintaining the validity of such acts.

Derivation: Penal Code, § 43.

Matter of Kendall (1881), 85 N. Y. 305; People ex rel. Sinkler v. Terry (1888), 108 N. Y. 1, rev'g 42 Hun, 273; see also People v. Albertson, 8 How. 363; People v. Collins, 7 Johns. 549; Conover v. Devlin, 15 How. 470; People v. Cook, 14 Barb. 324; Greenleaf v. Low, 4 Den. 168; Hamlin v. Dingman, 5 Lans. 61; People v. Peabody, 6 Abb. 228; Read v. Buffalo, 3 Keyes 445; Rochester & Gen. Val. R. Co. v. Clark Nat. Bank, 60 Barb. 234; People v. Stevens, 5 Hill, 616; McKinstry v. Tanner, 9 Johns. 135; *Weeks v. Ellis, 2 Barb. 324*; Wilcox v. Smith, 5 Wend. 231.

§ 1822. Giving or offering bribes.

A person who gives or offers a bribe to any executive officer of this state with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or by both.

Derivation: Penal Code, § 44.

People v. Sharp (1887), 107 N. Y. 439, 5 N. Y. Cr. 569, rev'g 45 Hun, 460; see also State v. Ellis, 33 N. J. L. 102.

§ 1823. Asking or receiving bribes.

An executive officer, or person elected or appointed to an executive office, who asks, receives or agrees to receive any bribe, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this state.

Derivation: Penal Code, § 45.

People v. Markham, 64 Cal. 147, 49 Am. Rep. 700; Walsh v. People, 64 Ill. 58, 16 Am. Rep. 569.

§ 1824. Attempting to prevent officer from performing duty.

A person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 46.

People v. Hall (1884), 31 Hun, 404, 2 N. Y. Cr. 134; People v. Hochstim (1901), 36 Misc. 562, 569, 73 N. Y. Supp. 626.

§ 1825. Resisting officer.

A person who knowingly resists, by the use of force or violence, any executive officer, in the performance of his duty, is guilty of a misdemeanor.

Derivation: Penal Code, § 47.

People v. Hochstim (1901), 36 Misc. 567, 574, 73 N. Y. Supp. 626.

§ 1826. Taking unlawful fees.

A public officer or a deputy, clerk, assistant or other subordinate of a public officer, or any person appointed or employed by or in the office of a public officer, who shall, in any manner act for or in behalf of any such officer, who asks or receives, or consents or agrees to receive, any emolument, gratuity or reward, or any promise of emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, except such as may be authorized by law, for doing or omitting to do any official act, or for performing or omitting to perform, or for having performed or omitted to perform any act whatsoever directly or indirectly related to any matter in respect to which any duty or discretion is by or in pursuance of law imposed upon or vested in him, or may be exercised by him by virtue of his office, or appointment or employment or his actual relation to the matter, shall be guilty of a felony, punishable by imprisonment for not more than ten years or by a fine of not more than four thousand dollars, or both.

Derivation: Penal Code, § 48, as amended L. 1890, ch. 336.

People v. Bissert (1902), 71 App. Div. 118, 172 N. Y. 643, 75 N. Y. Supp. 630.

§ 1827. Comptroller not to be interested in tax sales.

The comptroller, or any person employed in his office, who shall be directly or indirectly interested in any tax sale made by such comptroller, or in the title acquired by such sale, or in any money paid or to be paid for the redemption of any lands sold for taxes or on the cancellation of any tax sale; or any person who shall pay or give to the state comptroller, or to any employee in his office, any compensation, reward or promise thereof for any service or services performed or to be performed in regard to such sale, redemption, cancellation or such tax title, is guilty of a misdemeanor. A sale in violation of this section is void.

Derivation: Penal Code, § 48a, added L. 1893, ch. 692.

§ 1828. Prison officers not to be interested in prison contracts.

A superintendent of state prisons, or agent, warden or other officer or guard, employed at either of the prisons, who:

1. Shall be directly or indirectly interested in any contract, purchase or sale, for, by, or on account of such prison; or,

2. Accepts a present from a contractor or contractor's agent, directly or indirectly, or employs the labor of a convict or another person employed in such prison on any work for the private benefit of such superintendent, officer or guard, is guilty of a misdemeanor, except that the agent and warden shall be entitled to employ prisoners for necessary household service.

Derivation: Penal Code, § 48b, added L. 1893, ch. 692.

§ 1829. Taking reward for omitting or delaying official acts.

An executive officer asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

Derivation: Penal Code, § 49.

§ 1830. Taking fees for services not rendered.

An executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 50.

§ 1831. Taking unlawful reward for services in extradition of fugitives.

An officer of this state who asks or receives any fee or compensation of any kind for any services rendered or expense incurred in procuring from the governor of this state a demand upon the executive authority of a state or territory of the United States, or of a foreign government, for the surrender of a fugitive from justice; or for any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this state, or for detaining him therein, except upon an employment by the governor of this state, is guilty of a misdemeanor.

Derivation: Penal Code, § 51, as amended L. 1882, ch. 384.

People ex rel. Gardenier v. Supervisors (1892), 134 N. Y. 1, aff'g 56 Hun, 20, 8 N. Y. Supp. 752; Ellis v. Jacob (1897), 17 App. Div. 471, 45 N. Y. Supp. 177.

§ **1832. Corrupt bargain for appointment.**

1. A person who gives or offers to give, any gratuity or reward, in consideration that himself or any other person shall be appointed to a public office, or to a clerkship, deputation, or other subordinate position, in such an office, or shall be permitted to exercise, perform, or discharge any prerogatives or duties, or to receive any emoluments, of such an office, is guilty of a misdemeanor.

2. A person who asks or receives, or agrees to receive, any gratuity, or reward, or any promise thereof, for appointing another person, or procuring for another person an appointment, to a public office or to a clerkship, deputation, or other subordinate position in such an office, is guilty of a misdemeanor. If the person so offending is a public officer, a conviction also forfeits his office.

Derivation: Penal Code, §§ 52, 53.

Gray v. Hook (1851), 4 N. Y. 449; Deyoe v. Woodworth (1894), 144 N. Y. 448, aff'g 70 Hun, 599, 24 N. Y. Supp. 373; People v. Koller (1906), 116 App. Div. 175, 101 N. Y. Supp. 518, 20 Crim. Rep. 423; Becker v. Ten Eyck, 6 Paige, 68; Mott v. Robins, 1 Hill, 21; Robinson v. Kalbfleisch, 5 Th. & C. 212; Tappan v. Brown, 9 Wend. 175; State v. Purdy, 36 Wis. 213, 17 Am. Rep. 485.

§ **1833. Selling right to official powers.**

A public officer who, for any reward, consideration or gratuity, paid, or agreed to be paid, directly or indirectly, grants to another the right or authority to discharge any functions of his office, or permits another to make appointments or perform any of its duties, is guilty of a misdemeanor, and a conviction for the same forfeits his office, and disqualifies him forever from holding any office whatever under this state.

Derivation: Penal Code, § 54.

§ **1834. Appointment avoided by conviction.**

A grant, appointment, or deputation, made contrary to the provisions of either subdivision two of section eighteen hundred and thirty-two, or section eighteen hundred and thirty-three, is avoided and annulled by a conviction for the violation of either of those sections, in respect to such grant, appointment, or deputation; but any official act done before conviction, is unaffected by the conviction.

Derivation: **Penal Code, § 55.**

§ **1835. Intrusion into public office.**

A person who wilfully intrudes himself into a public office, to which he has not been duly elected or appointed, or who, having been an executive or administrative officer, wilfully exercises any of the functions of his office, after his right so to do has ceased, is guilty of a misdemeanor.

Derivation: Penal Code, § 56.

Hamlin v. Karsafer, 15 Oreg. 456, 3 Am. St. Rep. 176.

§ **1836. Officer refusing to surrender to successor.**

A person who, having been an executive or administrative officer, wrongfully refuses to surrender the official seal, or any books or papers, appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor.

Derivation: Penal Code, § 57.

Matter of Baker, 11 How. 418; In re Bartlett, 9 How. 414; Cobee v. Davis, 8 How. 367; Conover's Case, 5 Abb. Pr. 73; Matter of Davis, 19 How. 323; Devlin's case, 5 Abb. Pr. 281; People v. Dikeman, 7 How. 367; People v. Stevens, 5 Hill, 616; Matter of Whiting, 2 Barb. 513; Welch v. Cook, 7 How. 282.

§ **1837. Administrative officers.**

The various provisions of the preceding sections of this article which relate to executive officers apply to administrative officers, in the same manner as if administrative and executive officers were both mentioned.

Derivation: Penal Code, § 58.

§ **1838. Injury to records and misappropriation by ministerial officers.**

A sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or,

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him in virtue of his office,

Is guilty of felony.

Derivation: Penal Code, § 114.

Ayres v. Covill, 18 Barb. 263.

§ 1839. Permitting escapes, and other unlawful acts, committed by ministerial officers.

A sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer who:

1. Receives any gratuity, or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,

2. Commits any unlawful act tending to hinder justice,

Is guilty of a misdemeanor.

A conviction of a sheriff or other officer also operates as a forfeiture of his office, and disqualifies him forever thereafter from holding the same.

Derivation: Penal Code, § 115. Last sentence, Code Civil Proc., § 159, in part.

Blust v. Collier (1901), 62 App. Div. 479, 70 N. Y. Supp. 774; see also Blue v. Com. 4 Watts, 215.

§ 1840. Neglecting or refusing to execute process.

An officer who, in violation of a duty imposed upon him by law to receive a person into his official custody, or into a prison under his charge, wilfully neglects or refuses so to do, is guilty of a misdemeanor.

Derivation: Penal Code, § 116.

Blust v. Collier (1901), 62 App. Div. 479, 70 N. Y. Supp. 774; see also Smith v. Botens, 13 N. Y. Supp. 224.

People v. Meakim (1892), 133 N. Y. 214, 8 N. Y. Cr. 409, aff'g 61 Hun, 327, 15 N. Y. Supp. 917, 8 N. Y. Cr. 308; People v. Willis (1899), 158 N. Y. 392, 34 App. Div. 203, 54 N. Y. Supp. 642, 14 N. Y. Cr. 414; People v. Herlihy (1901), 66 App. Div. 534, 16 N. Y. Cr. 235, 73 N. Y. Supp. 236, rev'g 35 Misc. 711, 72 N. Y. Supp. 389, 16 Crim. Rep. 38; People ex rel. Devery v. Jerome (1901), 36 Misc. 256, 73 N. Y. Supp. 306; People v. Glennon (1903), 78 App. Div. 271, rev'd 175 N. Y. 46, 79 N. Y. Supp. 997; Delaney v. Flood (1904), 45 Misc. 100, 91 N. Y. Supp. 672; Sharp v. Erie Railroad Co. (1904), 90 App. Div. 504, 85 N. Y. Supp. 553; see also People v. Bedell, 2 Hill, 196; People v. Brooks, 1 Den. 457; People v. Com. Council, 16 Abb. N. C. 114, 2 How. Pr. (N. S.) 68; Williams v. People, 15 Week. Dig. 317.

§ 1841. Provision as to neglect of duty.

A public officer, or person holding a public trust or employment, upon whom any duty is enjoined by law, who wilfully neglects to

perform the duty, is guilty of a misdemeanor. This and section eighteen hundred and forty do not apply to cases of official acts or omissions the prevention or punishment of which is otherwise specially provided by statute.

Derivation: Penal Code, § 117.

§ 1842. Neglect of county officer to make report.

A county officer or an officer whose salary is paid by the county, who neglects or refuses to make a report under oath to the board of supervisors of such county on any subjects or matters connected with the duties of his office, whenever required by resolution of such board, is guilty of a misdemeanor.

Derivation: Penal Code, § 117a, added L. 1893, ch. 692.

§ 1843. Neglect of duty by superintendent or overseer of the poor.

The county superintendents of the poor, or any overseer of the poor, whose duty it shall be to provide for the support of any bastard and the sustenance of its mother, who shall neglect to perform such duty, shall be guilty of a misdemeanor, and shall on conviction, be liable to a fine of two hundred and fifty dollars, or to imprisonment not exceeding one year, or by both such fine and imprisonment.

Derivation: Penal Code, § 117b, added L. 1896, ch. 550.

§ 1844. Delaying to take person arrested for crime before a magistrate.

A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

Derivation: Penal Code, § 118.

People ex rel. Clapp v. Listman (1903), 84 App. Div. 633, 82 N. Y. Supp. 784, aff'g 40 Misc. 372.

§ 1845. Special peace officers to be citizens.

No sheriff of a county, mayor of a city, or officials, or other persons authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen, or other peace officers in this state, to preserve the public peace or quell public disturbance, shall hereafter, at the instance of any agent, society, association or corpora-

tion, or otherwise, appoint as such special deputy, special constable, marshal, policeman, or other peace officer, any person who shall not be a citizen of the United States and a resident of the state of New York, and entitled to vote therein at the time of his appointment, and a resident of the same county as the mayor or sheriff or other official making such appointment; and no person shall assume or exercise the functions, powers, duties or privileges incident and belonging to the office of special deputy sheriff, special constables, marshal or policeman, or other peace officer,without having first received his appointment in writing from the authority lawfully appointing him.

A violation of the provisions of this section is a misdemeanor.

Derivation: Penal Code (in part), § 119, as amended L. 1892, ch. 272. For remainder of section, see § 1846, *post*.

People v. Glennon (1903), 78 App. Div. 271, 79 N. Y. Supp. 997, rev'd 175 N. Y. 46.

§ 1846. Making arrest without lawful authority.

Any person who shall, in this state, without due authority, exercise, or attempt to exercise the functions of, or hold himself out to any one as a deputy sheriff, marshal, or policeman, constable or peace officer, or any public officer, or person pretending to be a public officer, who, unlawfully, under the pretense or color of any process, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without a regular process therefor, is guilty of a misdemeanor. But nothing herein contained shall be deemed to affect, repeal or abridge the powers authorized to be exercised under sections one hundred and two, one hundred and four, one hundred and sixty-nine, one hundred and eighty-three, eight hundred and ninety-five, eight hundred and ninety-six and eight hundred and ninety-seven of the code of criminal procedure; or under section ninety of the railroad law; or under section eleven hundred and forty-seven of this chapter. All places kept for summer resorts and the grounds of racing associations in the counties of New York, Kings and Westchester, are hereby exempted from the provisions of this section.

Derivation: Penal Code (in part), § 119, as amended L. 1892, ch. 272.

See cases under section 1845.

§ 1847. Misconduct in executing search warrant.

An officer, who, in executing a search warrant, wilfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

Derivation: Penal Code, § 120.

Phelps v. McAdoo (1905), 47 Misc. 524, 94 N. Y. Supp. 265, 19 Crim Rep. 127; see also Dell v. Clapp, 10 Johns. 263.

§ 1848. Refusing to aid officer in making an arrest.

A person, who, after having been lawfully commanded to aid an officer in arresting any person, or in re-taking any person who has escaped from legal custody, or in executing any legal process, wilfully neglects or refuses to aid such officer is guilty of a misdemeanor.

Derivation: Penal Code, § 121.

§ 1849. Refusing to make an arrest.

A person, who, after having been lawfully commanded by any magistrate to arrest another person, wilfully neglects or refuses so to do, is guilty of a misdemeanor.

Derivation: Penal Code, § 122.

§ 1850. Resisting execution of process and aiding escapes in county which has been proclaimed in insurrection.

A person, who, after proclamation issued by the governor declaring a county to be in a state of insurrection, resists, or aids in the resisting, the execution of process in such county, or who aids or attempts the rescue or escape of another from lawful custody or confinement in such county, or who resists, or aids in resisting, a force orderd out by the governor to quell or suppress an insurrection, is guilty of a felony.

Derivation: Penal Code, § 123, as amended L. 1882, ch. 384.

§ 1851. Resisting public officer in the discharge of his duty.

A person who, in any case or under any circumstances not otherwise specially provided for, wilfully resists, delays, or obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor.

Derivation: Penal Code, § 124.

Kline v. Hibbard (1894), 80 Hun, 50, 29 N. Y. Supp. 807; People v. Hochstim (1901), 36 Misc. 562, 574, 73 N. Y. Supp. 626.

§ 1852. Buying demands by a justice or constable for suit before a justice.

A justice of the peace or a constable who, directly or indirectly, buys or is interested in buying any thing in action, for the purpose of commencing a suit thereon before a justice, is guilty of a misdemeanor.

Derivation: Penal Code, § 137.

§ 1853. Giving inducement to bring suit before a justice.

A justice of the peace or constable who, directly or indirectly, gives, or promises to give, any valuable consideration to any person as an inducement to bring, or in consideration of having brought, a suit thereon before a justice, is guilty of a misdemeanor.

Derivation: Penal Code, § 138, as amended L. 1882, ch. 384.

§ 1854. Forfeiture of office.

A person convicted of a violation of either of the two preceding sections, in addition to the punishment, by fine and imprisonment, prescribed therefor by this article, forfeits his office.

Derivation: Penal Code, § 139.

Matter of Manheim (1906), 113 App. Div. 137, 99 N. Y. Supp. 87.

§ 1855. Receiving claims, in what cases allowable.

Nothing in the three preceding sections shall be construed to prohibit the receiving in payment of any thing in action for any estate, real or personal, or for any services of an attorney or counsellor actually rendered, or for a debt antecedently contracted; or the buying or receiving of any thing in action for the purpose of remittance, and without any intent to violate the three preceding sections.

Derivation: Penal Code, § 140.

Baldwin v. Latson, 2 Barb. Ch. 306; Goodell v. People, 5 Park. 206; Mann v. Fairchild, 2 Keyes, 106; Ramsey v. Gould, 57 Barb. 398; People v. Walbridge, 3 Wend. 120; Watson v. McLaren, 19 Wend. 557.

§ 1856. Application of previous sections to persons prosecuting in person.

The provisions of sections two hundred and seventy-four, two hundred and seventy-five, eighteen hundred and fifty-three and

eighteen hundred and fifty-five, relative to the buying of claims by a justice of the peace or constable, with intent to prosecute them, apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting in person an action or legal proceeding.

Derivation: Penal Code, § 141, as amended L. 1882, ch. 384.

§ 1857. Omission of duty by public officer.

Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding a public trust or employment, every wilful omission to perform such duty, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Derivation: Penal Code, § 154.

People v. Cook (1853), 8 N. Y. 67; Gardner v. People (1874), 3 Hun, 222; Conners v. Adams (1878), 13 Hun, 427; People v. Ryall (1890), 58 Hun, 235, 11 N. Y. Supp. 828; People v. Long Island R. Co. (1892), 134 N. Y. 506, aff'g 58 Hun, 412, 12 N. Y. Supp. 41; People v. Willis (1898), 34 App. Div. 203, 54 N. Y. Supp. 642, aff'd 158 N. Y. 392; People v. Thomas (1900), 32 Misc. 170, 66 N. Y. Supp. 191; People v. Herlihy (1901), 66 App. Div. 534, rev'g 35 Misc. 711, 73 N. Y. Supp. 236, 16 Crim. Rep. 240, 72 N. Y. Supp. 389, 16 Crim Rep. 38; People ex rel. Clapp v. Listman (1903), 40 Misc. 375, 82 N. Y. Supp. 263; People v. Erie Railroad Co. (1904), 90 App. Div. 504, 85 N. Y. Supp. 553; Delaney v. Flood (1904), 45 Misc. 97, 91 N. Y. Supp. 672; see also Bentley v. Phelps, 27 Barb. 524; People v. Brooks, 1 Den. 457; People v. Calhoun, 3 Wend. 421; Clark v. Miller, 47 Barb. 38; People v. Coon, 15 Wend. 276; Bartlett v. Crozier, 17 Johns. 439; Green v. Rumsey, 2 Wend. 611; People v. Norton, 7 Barb. 477; In re Pickett, 55 How. 491; People v. Stocking, 32 How. 49, 50 Barb. 573.

§ 1858. Falsely marking enrolled person exempt.

A county clerk who marks "exempt" any person enrolled as liable to military duty, whom he knows not to be exempt, is guilty of a misdemeanor.

Derivation: Penal Code, § 154a, added L. 1893, ch. 692.

§ 1859. Neglect to return names of constables.

A town clerk who wilfully omits to return to the county clerk the name of a person who has qualified as constable, pursuant to law, is punishable by a fine not exceeding ten dollars.

Derivation: Penal Code, § 161.

§ 1860. Falsely certifying as to record of deeds and instruments.

An officer authorized by law to record a conveyance of real property, or of any other instrument, which by law may be recorded, who knowingly and falsely certifies that such a conveyance or instrument has been recorded, is guilty of a felony.

Derivation: Penal Code, § 162.

§ 1861. False certificates.

A public officer who, being authorized by law to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not expressly provided by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 163.

§ 1862. Penalty for recording instruments without acknowledgment.

A public officer authorized to file or record any instrument or conveyance of, or affecting property which is duly proved or acknowledged, who knowingly files or records any such instrument or conveyance which is not accompanied by a certificate according to law, of the proof or acknowledgment, is guilty of a misdemeanor.

Derivation: Penal Code, § 164.

People v. Brown, 7 Wend. 493.

§ 1863. Auditing and paying fraudulent claims upon the state or a municipal corporation.

A public officer, or person holding or discharging the duties of any office or place of trust under the state, or in any county, town, city or village, a part of whose duty is to audit, allow or pay, or take part in auditing, allowing or paying, claims or demands upon the state, or such county, town, city or village, who knowingly audits, allows or pays, or directly or indirectly consents to, or in any way connives at the auditing, allowance or payment of any claim or demand against the state or such county, town, city or village, which is false or fraudulent, or contains charges, items or claims, which are false or fraudulent, is guilty of felony, punishable by imprisonment for a term not exceeding

five years, or by a fine not exceeding five thousand dollars, or by both.

Derivation: Penal Code, § 165, as amended L. 1892, ch. 662.

People v. Stock (1896), 21 Misc. 147, 47 N. Y. Supp. 94, 12 N. Y. Cr. 420; People v. Klipfel (1899), 160 N. Y. 371, 14 N. Y. Cr. 169, aff'g 37 App. Div. 224, 55 N. Y. Supp. 789; People v. Fielding (1899), 36 App. Div. 401, 55 N. Y. Supp. 530; People v. King (1897), 19 Misc. 98, 43 N. Y. Supp. 975.

§ 1864. Obtaining proceeds of fraudulent audit or payment.

A person who, being or acting as a public officer or otherwise, by wilfully auditing, or paying, or consenting to, or conniving at the auditing or payment of a false or fraudulent claim or demand, or by any other means, wrongfully obtains, receives, converts, disposes of or pays out or aids, or abets another in obtaining, receiving, converting, disposing of, or paying out any money or property, held, owned, or in the possession of the state, or of any city, county or village, or other public corporation, or any board, department, agency, trustee, agent or officer thereof, is guilty of a felony, punishable by imprisonment for not less than three nor more than five years, or by a fine not exceeding five times the amount of value of the money or the property converted, paid out, lost or disposed of by means of the act done or abetted by such person, or by both such imprisonment and fine. The amount of any such fine when paid or collected, shall be paid to the treasury of the corporation or body injured. A conviction under this section forfeits any office held by the offender, and renders him incapable thereafter of holding any office or place of trust.

A transfer in whole or part of any deposit with any bank or other depositary, or of any credit, claim or demand upon such depositary, whereby the right, title or possession of the owner or holder of such deposit, or of any custodian thereof, is impaired or affected, is a conversion thereof under this section.

Derivation: Penal Code, §§ 166, 167.

People v. Willis (1898), 24 Misc. 539, 54 N. Y. Supp. 129, 13 N. Y. Cr. 348. 14 N. Y. Cr. 414, 158 N. Y. 392, 14 N. Y. Cr. 72.

§ 1865. Misappropriation and falsification of accounts by public officers.

A public officer, or a deputy, or clerk of any such officer, and any other person receiving money on behalf of, or for account of

the people of this state, or of any department of the government of this state, or of any bureau or fund created by law, and in which the people of this state are directly or indirectly interested, or for or on account of any city, county, village or town, who:

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money so received by him as such officer, clerk or deputy, or otherwise; or,

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him; or,

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

4. Wilfully omits or refuses to pay over to the people of this state or their officer or agent authorized by law to receive the same, or to such city, village, county, or town, or the proper officer or authority empowered to demand and receive the same, any money received by him as such officer when it is his duty imposed by law to pay over, or account for, the same,

Is guilty of a felony.

Derivation: Penal Code, § 470.

Bork v. People (1883), 91 N. Y. 5, 1 N. Y. Cr. 375, aff'g 26 Hun, 670, 1 N. Y. Crim. 368; People v. Lyon (1885), 99 N. Y. 210, rev'g 33 Hun, 623; People v. Church (1885), 3 N. Y. Cr. 57, 1 How. Pr. (N. S.) 369.

§ 1866. Violations of law by public officers.

An officer or other person mentioned in the last section who wilfully disobeys any provision of law regulating his official conduct, in cases other than those specified in that section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years, or both.

Derivation: Penal Code, § 471.

People ex rel. Clapp v. Listman (1903), 40 Misc. 372, 82 N. Y. Supp. 263.

§ 1867. Misappropriation by county treasurer.

A county treasurer, who wilfully misappropriates any moneys, funds or securities, received by or deposited with him as such treasurer, or who is guilty of any other malfeasance or wilful neglect of duty in his office, is punishable by a fine not less than five hundred dollars nor more than ten thousand dollars, or by

imprisonment in a state prison not less than one year or more than five years, or by both such fine and imprisonment.

Derivation: Penal Code, § 472.

§ 1868. Officials not to be interested in sales, leases or contracts.

A public officer or school officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, except in cases where such sale, lease or contract, or payment under the same, is subject to audit or approval by the commissioner of education, is guilty of a misdemeanor.

Derivation: Penal Code, § 473, as amended L. 1888, ch. 493; L. 1890, ch. 220.

Smith v. City of Albany (1875), 61 N. Y. 444, aff'g 7 Lans. 14; People ex rel. Spaulding v. Supervisors (1901), 66 App. Div. 117, 72 N. Y. Supp. 782; Banigan v. Village of Nyack (1898), 25 App. Div. 150, 49 N. Y. Supp. 199; see also Beebe v. Board etc., 19 N. Y. Supp. 630.

§ 1869. County clerks omitting to publish statements required by law.

A county clerk who wilfully omits to publish any statement required by law, within the time prescribed, is guilty of a misdemeanor, punishable by a fine of one hundred dollars, or imprisonment for six months, or both.

Derivation: Penal Code, § 474.

§ 1870. Obstructing officer in collecting revenue.

A person who wilfully obstructs or hinders a public officer from collecting any revenue, taxes or other sum of money in which, or in any part of which the people of this state are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

Derivation: Penal Code, § 475.

People ex rel. Spaulding v. Supervisors (1901), 66 App. Div. 117, 122, 72 N. Y. Supp. 782.

§ 1871. School district trustee not to draw draft on supervisor in certain cases.

A school district trustee who issues an order or draws a draft on a supervisor or collector for any money, unless there is at the time sufficient money in the hands of such supervisor or collector belonging to the district to meet such order or draft, is guilty of a misdemeanor.

Derivation: Penal Code, § 485a, added L. 1893, ch. 692.

§ 1872. Fraudulently presenting bills or claims to public officers for payment.

A person who, knowingly, with intent to defraud, presents, for audit, or allowance, or for payment, to any officer or board of officers of the state, or of any county, town, city or village, authorized to audit, or allow, or to pay bills, claims or charges, any false or fraudulent claim, bill, account, writing or voucher, or any bill, account or demand, containing false or fraudulent charges, items or claims, is guilty of a felony.

Derivation: Penal Code, § 672.

O'Reilly v. People (1881), 86 N. Y. 154, 40 Am. Rep. 525, rev'g 1 Hun, 460, 3 Th. & C. 787; People v. Bragle (1882), 88 N. Y. 585, 63 How. Pr. 143; People v. King (1897), 12 N. Y. Cr. 240, 19 Misc. 98, 43 N. Y. Supp. 975; People v. Stock (1897), 21 Misc. 147, 47 N. Y. Supp. 94, 12 N. Y. Cr. 420; People v. Coombs (1899), 158 N. Y. 533, 14 N. Y. Cr. 17, aff'g 36 App. Div. 284, 55 N. Y. Supp. 276; People v. Klipfel (1899), 160 N. Y. 376, 14 N. Y. Cr. 169, aff'g 37 App. Div. 224, 55 N. Y. Supp. 789; People v. Miles (1908), 123 App. Div. 862, 108 N. Y. Supp. 510.

§ 1873. Taking property from officer's custody.

A person who takes from the custody of an officer or other person, personal property, in charge of the latter, under any process of law, or who wilfully injures or destroys such property, is guilty of a misdemeanor.

Derivation: Penal Code, § 83.

Simpson v. St. John (1883), 93 N. Y. 363; People v. Booth (1907), 52 Misc. 340, 102 N. Y. Supp. 62, 20 Crim. Rep. 481.

§ 1874. Neglecting to make transcripts or making false certificates.

If a surrogate, county clerk, register, clerk of a court, or other

person, having the custody of the records or other papers in a public office, refuses, or unreasonably neglects or delays, to make a search, or to furnish a transcript or certificate as prescribed in section two hundred and fifty-five of the judiciary law, section one hundred and sixty-one of the county law, or section sixty-six of the public officers law, or makes a false certificate, he is guilty of a misdemeanor.

Derivation: Code Civ. Proc., § 1952, in part.

§ 1875. Violation by sheriff of certain provisions relating to prisoners.

A sheriff, or other officer, who wilfully violates any of the provisions of sections one hundred and ten and one hundred and eleven of the code of civil procedure; or sections three hundred and forty, three hundred and forty-one, three hundred and forty-two, three hundred and forty-three, three hundred and forty-four, three hundred and forty-five, and three hundred and forty-six of the prison law, forfeits to the person aggrieved, treble damages. He is also guilty of a misdemeanor, and shall be punished accordingly. A conviction also operates as a forfeiture of his office.

Derivation: Code Civ. Proc., § 961, in part.

§ 1876. Misdemeanor for judge, justice or magistrate to permit any but attorneys to practice in his court.

A judge, justice or magistrate within the city of New York who knowingly permits to practice in his court, a person who has not been regularly admitted to practice in the courts of record of this state, is guilty of a misdemeanor, and shall be punished by imprisonment in the county jail, not exceeding one month, or by a fine of not less than one hundred dollars or more than two hundred and fifty dollars, or by both such fine and imprisonment.

But this section and section two hundred and seventy-one do not apply to a case where a person appears in a cause to which he is a party.

Derivation: Code Civ. Proc., § 125.

Matter of Bolte, 97 App. Div. 551, 572, 90 N. Y. Supp. 499, see also § 272.

ARTICLE 172.

PUBLIC SAFETY.

SECTION 1890. Overloading passenger vessel.
1891. Unauthorized pressure of steam.
1892. Generation of unsafe amount of steam.
1893. Mismanagement of steam boilers.
1894. Explosives and combustibles.
1895. Endangering life by maliciously placing explosive near building.
1896. Making and disposing of dangerous weapons.
1897. Carrying and use of dangerous weapons.
1898. Possession, presumptive evidence.
1899. Destruction of dangerous weapons.
1900. Negligently managing and refusing to extinguish fires.
1901. Obstructing attempts to extinguish fires.
1902. Unauthorized manufacture, sale or use of illuminating oils.
1903. Violating law to prevent conflagrations.
1904. Ice cutting and ice bridges.
1905. Fire-escapes in hotels.
1906. Discharging fire-arms.
1907. Driving vehicles and animals on sidewalks.
1908. Driving vehicles and teams on side-paths.
1909. Riding bicycle on sidewalk or foot-path.
1910. Endangering life by refusal to labor.
1911. Injury to life saving apparatus.
1912. Procuring liquor for persons to whom sale is forbidden by the liquor tax law.
1913. Employment by common carrier of person addicted to intoxication.
1914. Sale of pistols, revolvers and other fire arms.

§ 1890. Overloading passenger vessel.

A person navigating a vessel for gain, who wilfully or negligently receives so many passengers, or such a quantity of other lading, on board the vessel, that by means thereof it sinks or is overset or injured, and thereby the life of a human being is endangered, is guilty of a misdemeanor.

Derivation: Penal Code, § 359.

§ 1891. Unauthorized pressure of steam.

A person who applies, or causes to be applied, to a steam boiler a *higher pressure* of steam than is allowed by law, or by the

inspector, officer or person authorized to limit the pressure of steam to be applied to such boiler, is guilty of a misdemeanor.

Derivation: Penal Code, § 360.

§ 1892. Generation of unsafe amount of steam.

A captain or other person having charge of the machinery or boiler of a steamboat, used for the conveyance of passengers, in the waters of this state, who from ignorance or gross neglect, or for the purpose of increasing the speed of the boat, creates, or causes to be created, an undue and unsafe pressure of steam, is guilty of a misdemeanor.

Derivation: Penal Code, § 361.

People v. Jenkins, 1 Hill, 467.

§ 1893. Mismanagement of steam boilers.

An engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who, wilfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

Derivation: Penal Code, § 362.

§ 1894. Explosives and combustibles.

A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a misdemeanor.

A person who manufactures gunpowder, dynamite, nitro-glycerine, liquid or compressed air or gases, except acetylene gas and other gases used for illuminating purposes, naphtha, gasoline, benzine or any explosive articles or compounds, or manufactures ammunition, fireworks or other articles of which such substances are component parts in a cellar, room, or apartment of a tenement or dwelling-house or any building occupied in whole or in part by persons or families for living purposes, is guilty of a misdemeanor.

And a person who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substances, in-

jures or occasions the injury of the person or property of another, is punishable by imprisonment for not more than two years.

Any person or persons who shall knowingly present, attempt to present, or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitroglycerine, powder or other explosives dangerous to life or limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding one thousand dollars and not less than three hundred dollars, or imprisonment in a state prison for not less than one nor more than five years, or be subject to both such fine and imprisonment.

Nothing in this section contained shall be construed to prohibit or forbid the manufacture and sale of soda-water, seltzer-water, ginger ale, carbonic or mineral water, or the charging with liquid carbonic acid gas of such waters or ordinary waters, or of beer, wines, ales or other malt and vinous beverages in such cellar, room or apartment of a tenement or dwelling-house, or any building occupied in whole or in part by persons or families for living purposes.

Derivation: Penal Code, § 389, as amended L. 1887, ch. 689; L. 1900, ch. 494; L. 1902, ch. 486.

Heeg v. Licht (1880), 80 N. Y. 579, 36 Am. Rep. 654, 8 Abb. N. C. 355, rev'g 16 Hun, 257; Van Orden v. Robinson (1887), 45 Hun, 570; People v. Lichtman (1902), 173 N. Y. 63, rev'g 65 App. Div. 76, 72 N. Y. Supp. 511; People v. Murray (1902), 76 App. Div. 118, 121, 78 N. Y. Supp. 721; see also Bradley v. People, 56 Barb. 72; Rhodes v. Dunbar, 57 Pa. St. 274.

§ 1895. Endangering life by maliciously placing explosive near building.

A person, who places in, upon, under, against, or near to any building, car, vessel or structure, gunpowder or any other explosive substance, with intent to destroy, throw down, or injure the whole or any part thereof, under such circumstances, that, if the intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of a felony.

Derivation: Penal Code, § 465.

ing of dangerous weapons.

or causes to be manufactured, or
, or gives, or disposes of any in-
l usually known as a blackjack,
bag, bludgeon, or metal knuckles,
offers, sells, loans, leases, or gives
er fire-arm or any air-gun, spring-
pon in which the propelling force
ment or weapon commonly known
ich any loaded or blank cartridges
ny loaded or blank cartridges or
person under the age of sixteen
nor. (Amended by L. 1911, ch.

as amended L. 1884, ch. 46; L. 1889,
. 222; L. 1905, ch. 92.

f dangerous weapons.

e against another, or who carries,
r weapon of the kind commonly
t, billy, sandclub, sandbag, metal
ith intent to use the same unlaw-
possesses a dagger, dirk, danger-
other dangerous or deadly instru-
felony.

of sixteen years, who shall have,
on, any of the articles named or
which it is forbidden therein to
to him, shall be guilty of a misde-

f sixteen years, who shall have in
age or town in this state, any pistol,
of a size which may be concealed upon
written license therefor, issued to him by a
such city or village, or by a justice of the
, or in such manner as may be prescribed by
city, village or town, shall be guilty of a mis-

r the age of sixteen years, who shall have or
n his person in any city, village or town of
evolver, or other firearm without a written
ore issued to him by a police magistrate
by a justice of the peace of such town,
e prescribed by ordinance of such city,
village or tow ty of a felony.

N.Y. Times
January 3. 1912

THE NEW YORK T

OU MAY KEEP GUN AT HOME.

ustice Pendleton Frees Lawyer Arrested for Breaking Sullivan Law.

Supreme Court Justice Pendleton handed down a decision yesterday upholding a writ of habeas corpus sued out by Joseph F. Darling, a lawyer, who opposed the Sullivan gun law as unconstitutional and had himself arrested to test it. Darling was arrested Sept. 22 by Police Captain John W. O'Connor, after he had taken O'Connor to his home and pointed out a revolver in a cabinet in his bedroom. Magistrate Corrigan committed Darling to the Tombs, and he was released in custody of his counsel. The opinion of Justice Pendleton holds that the Sullivan law cannot be construed to make it criminal for a man to keep a weapon in his house. In refusing to hold Darling, Justice Pendleton said:

"The object of the statute was plainly to limit and restrict the cases, in which deadly instruments might be used to inflict injury, by discouraging the possession of them. The precise and only question here involved is whether the possession, thereby made an offense, is actual physical possession or a constructive possession.

"The act in question is a penal statute, and under well settled principles is to be strictly construed. To hold that every possible kind of constructive possession is made a crime would be to give the language a very broad significance. By limiting it to physical possession the necessary requirements of the language are met, and in view of the rules governing the interpretation of penal statutes I do not think it proper to extend its meaning beyond the actual requirements of the language used.

"Justice Pendleton observed that a more extensive construction would [illegible] constitutionality of the law [illegible] as an act exceeding the [illegible] interfering with the [illegible] to take measures for [illegible]

"The State cannot be [illegible] search upon any of the [illegible] either when the Constitution [illegible] to secure against [illegible] the rules of police [illegible] cannot be [illegible] is most apt to [illegible] and actual [illegible] the law in question [illegible] in that an [illegible] of the [illegible]

Any person not a citizen of the United States, who shall have or carry firearms, or any dangerous or deadly weapons in any public place, at any time, shall be guilty of a felony. This section shall not apply to the regular and ordinary transportation of firearms as merchandise, nor to sheriffs, policemen, or to other duly appointed peace officers, nor to duly authorized military or civil organizations, when parading, nor to the members thereof when going to and from the places of meeting of their respective organizations. (Am'd by L. 1911, ch. 195, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 410, as amended L. 1884, ch. 46; L. 1889, ch. 140; L. 1905, ch. 92; L. 1908, ch. 93.

Taranto v. North German Lloyd Steamship Co. (1908), 128 App. Div. 75; People v. Carvelto (1908), 123 App. Div. 822, 108 N. Y. Supp. 126; People v. Demorio (1908), 123 App. Div. 665, 108 N. Y. Supp. 24.

§ 1898. Possession, presumptive evidence.

The possession, by any person other than a public officer, of any of the weapons specified in the last section, concealed or furtively carried on the person, is presumptive evidence of carrying, or, concealing, or possessing, with intent to use the same in violation of that section.

Derivation: Penal Code, § 411.

People v. Cannon (1893), 139 N. Y. 32, aff'g 63 Hun, 306, 18 N. Y. Supp. 25; People v. Adams (1903), 176 N. Y. 361, aff'g 85 App. Div. 390, 83 N. Y. Supp. 481; People v. Carvelto (1908), 123 App. Div. 822, 108 N. Y. Supp. 126; Taranto v. North German Lloyd Steamship Co. (1908), 128 App. Div. 75; see also People v. Izzo, 14 N. Y. Supp. 907.

§ 1899. Destruction of dangerous weapons.

The unlawful carrying of a pistol, revolver, or other firearm, or of an instrument or weapon of the kind usually known as blackjack, bludgeon, slungshot, billy, sandclub, sandbag, metal knuckles, or of a dagger, dirk, dangerous knife, or any other dangerous or deadly weapon, by any person save a peace officer, is a nuisance and such weapons are hereby declared to be nuisances, and when any one or more of the above described instruments or weapons shall be taken from the possession of any person the same shall be surrendered to the sheriff of the county wherein the same shall be taken, except that, in cities of the first class the same shall be surrendered to the head of the police force or department of said city. The officer to whom the same may be so surrendered shall, except upon certificate of a judge of a court of record, or of the district attorney, that the non-destruction thereof is necessary or proper in the ends of justice, proceed at such time or times as he deems proper, and at least once in each year, to destroy or cause to be destroyed any and all such weapons or instruments, in such manner and to such extent that the same shall be and become wholly and entirely ineffective and useless

for the purpose for which destined and harmless to human life or limb. (Am'd by L. 1911, ch. 195, in effect Sept. 1, 1911.)

Derivation: Penal Code, § 411a, added L. 1907, ch. 582.

§ 1900. Negligently managing and refusing to extinguish fires.

A person who:

1. Wilfully or negligently sets fire to, or assists another to set fire to any waste or forest lands belonging to the state or to another person whereby such forests are injured or endangered; or,

2. Negligently sets fire to his own woods, by means whereof the property of another is endangered; or,

3. Negligently suffers any fire upon his own land to extend beyond the limits thereof; or,

4. Having been lawfully ordered to repair to a place of a fire in the woods, and to assist in extinguishing it, omits without lawful excuse to comply with the order,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 413, as amended L. 1892, ch. 692.

§ 1901. Obstructing attempts to extinguish fires.

A person who at any burning of a building is guilty of any disobedience to lawful orders of a public officer or fireman, or of any resistance to, or interference with, the lawful efforts of a fireman or company of firemen, to extinguish the same, or of any disorderly conduct likely to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Derivation: Penal Code, § 414, as amended L. 1892, ch. 692.

§ 1902. Unauthorized manufacture, sale or use of illuminating oils.

A person who violates any provision of the general business law, relating to the standard, manufacture, sale, use or storage of any oil or burning fluid, wholly or partly composed of naphtha, coal oil, petroleum or products manufactured therefrom, or of other substance or materials which will flash at a temperature below one hundred degrees Fahrenheit, or relating to the burning or carriage of any such oil or fluid which will ignite at a

temperature below three hundred degrees Fahrenheit, is guilty of a misdemeanor.

Derivation: Penal Code, § 427, as added L. 1896, ch. 551.

§ 1903. Violating law to prevent conflagrations.

A person who violates any of the provisions of section three hundred and six of the general business law is guilty of a misdemeanor.

Derivation: Penal Code, § 428, added L. 1896, ch. 551.

§ 1904. Ice cutting and ice bridges.

A person or corporation cutting ice in or upon any waters within the boundaries of this state for the purpose of removing the ice for sale or use, must surround the cuttings and openings made with fences or guards of boards or other material sufficient to form an obstruction to the free passage of persons through such fences or guards into the place where such ice is being cut. Such fences or guards must be erected at or before the time of commencing the cuttings or openings, and must be maintained until ice has again formed therein to the thickness of at least three inches, or until the ice about such openings has melted or broken up. Whoever omits to comply with this section is guilty of a misdemeanor.

A person who cuts, loosens or detaches from any bay, estuary, inlet, or main, or island shore of the Saint Lawrence river, within the jurisdiction of this state, any field of ice, or large body of ice, which, when so loosened or detached forms or is likely to form a bridge or passage way between an island of the river and the main shore, or between any islands of such river, is guilty of a misdemeanor. The sheriff of the county of Saint Lawrence may appoint one or more deputies to patrol the Saint Lawrence river within the county at such times as shall seem to him proper, and to arrest any persons found engaged in a violation of this section; the fees and expenses of such deputies for such services shall be a county charge against said county, and shall be audited and paid in the same manner as other county charges.

Derivation: Penal Code, § 429, as amended L. 1894, ch. 753; L. 1900, ch. 584; L. 1905, ch. 326.

Sickles v. N. Jersey Ice Co. (1897), 153 N. Y. 83, rev'g 80 Hun, 213, 30 N. Y. Supp. 10.

§ **1905. Fire-escapes in hotels.**

A person who:

1. Being the owner, lessee, proprietor or manager of a hotel, fails to comply with the law relative to providing or keeping appliances to be used as fire-escapes; or,

2. Being the chief engineer or officer performing the duties of such in any city or village neglects to make or cause to be made the inspection required by law to be made touching fire-escapes in hotels,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 447b, added L. 1896, ch. 551.

§ **1906. Discharging fire-arms.**

A person who, otherwise than in self defense, or in the discharge of official duty:

1. Wilfully discharges any species of fire-arms, air-gun or other weapon, or throws any other deadly missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues; or,

2. Intentionally, without malice, points or aims any fire-arm at or toward any other person; or,

3. Discharges, without injury to any other person, fire-arms, while intentionally without malice, aimed at or toward any person; or,

4. Maims or injures any other person by the discharge of any fire-arm pointed or aimed intentionally, but without malice, at any such person,

Is guilty of a misdemeanor.

A person who leaves the state, with intent to elude any provision of this section, or to commit any act without the state, which is prohibited by this section, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this section, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this section, upon the ground that the evidence might tend to

convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

Derivation: First par., Penal Code, § 468, as amended L. 1893, ch. 692; second par., Penal Code, § 461; third par., Penal Code, § 469.

§ 1907. Driving vehicles and animals on sidewalks.

A person who wilfully and without authority or necessity drives any team, vehicle, cattle, sheep, horse, swine or other animal along or upon a sidewalk is punishable by a fine of fifty dollars, or imprisonment in the county jail not exceeding thirty days, or both.

Derivation: Penal Code, § 652, in part, as amended L. 1897, ch. 267. For remainder of section, see § 1908, *post*.

Moore v. Gadsden (1883), 93 N. Y. 13; Fisher v. Village of Cambridge (1892), 133 N. Y. 527; Fuller v. Redding (1896), 16 Misc. 634, 39 N. Y. Supp. 109; Lechner v. Village of Newark (1896), 19 Misc. 452, 44 N. Y. Supp. 556; People v. Meyer (1899), 26 Misc. 117, 56 N. Y. Supp. 1097, 14 N. Y. Cr. 57.

§ 1908. Driving vehicles and teams on side-paths.

A person who wilfully and without authority or necessity drives any team or vehicle, except a bicycle, upon a side-path, or wheelway, constructed by or exclusively for the use of bicyclists, and not constructed in a street of a city, is punishable by a fine of not more than fifty dollars, or imprisonment not exceeding thirty days, or both.

Derivation: Penal Code, § 652, in part, as amended L. 1897, ch. 267. For remainder of section, see § 1907, *ante*.

See Cases under Section 1907.

§ 1909. Riding bicycle on sidewalk or foot-path.

A person who wilfully and without authority rides a bicycle upon a sidewalk or foot-path constructed, maintained, or allowed to remain for the exclusive use of pedestrians, in any street where a side-path for bicycles is maintained outside of an incorporated city or village, is guilty of a misdemeanor, punishable by a fine of not more than twenty-five dollars, or by imprisonment for not more than twenty days, or both.

Derivation: Penal Code, § 652a, added L. 1901, ch. 560.

People v. Schermerhorn (1908), 59 Misc. 149, 112 N. Y. Supp. 222.

§ 1910. Endangering life by refusal to labor.

A person, who wilfully and maliciously, either alone or in combination with others, breaks a contract of service or hiring, knowing, or having reasonable cause to believe, that the probable consequence of his so doing will be to endanger human life, or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, is guilty of a misdemeanor.

Derivation: Penal Code, § 673.

Adams v. People (1848), 1 N. Y. 173; People v. Marine Court (1875), 6 Hun, 214; Western, etc. Coal Co. v. Kilderhouse (1882), 87 N. Y. 435; People v. Lyon (1885), 99 N. Y. 219; 3 N. Y. Cr. 161, rev'g 33 Hun. 623; People v. Marra (1886), 4 N. Y. Cr. 304; People v. Bliven (1889), 112 N. Y. 79; People v. Martin (1902), 38 Misc. 67, 74, 76 N. Y. Supp. 953; see also People v. Lane, 1 Edm. Sel. Cas. 116; Langdon v. New York, etc. R. Co., 9 N. Y. Supp. 245; Murphy v. English, 64 How. Pr. 362; People v. Wilson, 3 Park, 199; Com. v. White, 123 Mass. 430, 25 Am. Rep. 116; Wisconsin v. Pelican Ins. Co., 127 U. S. 265.

§ 1911. Injury to life-saving apparatus.

Any person molesting, damaging, destroying, stealing, or in any way wrongfully withholding or interfering with the life-buoys, life-ladders, rubber or cork life-preservers, boats, or other life saving apparatus, or of the flags, pennants, signs, badges of office, buttons or medals of any humane or life saving association of the state of New York, shall be guilty of a misdemeanor.

Derivation: Penal Code, § 674g, added L. 1899, ch. 327.

§ 1912. Procuring liquor for persons to whom sale is forbidden by the liquor tax law.

The purchase or procurement of liquor for any person to whom it is forbidden to sell liquor under section twenty-nine of the liquor tax law, is a misdemeanor, punishable upon conviction, by a fine of not less than ten dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment.

Derivation: Liquor Tax Law (L. 1896, ch. 112), § 40, in part, as amended L. 1897, ch. 312, § 28.

§ 1913. Employment by common carrier of person addicted to intoxication.

Any person or officer of an association or corporation engaged in the business of conveying passengers or property for hire, who

shall employ in the conduct of such business, as an engineer, fireman, conductor, switch-tender, train dispatcher, telegrapher, commander, pilot, mate, fireman or in other like capacity, so that by his neglect of duty the safety and security of life, person or property so conveyed might be imperiled, any person who habitually indulges in the intemperate use of liquors, after notice that such person has been intoxicated, while in the active service of such person, association or corporation, shall be guilty of a misdemeanor.

Derivation: Liquor Tax Law (L. 1896, ch. 112), § 41.

§ **1914. Sale of pistols, revolvers and other firearms.** Every person selling a pistol, revolver or other firearm of a size which may be concealed upon the person whether such seller is a retail dealer, pawnbroker or otherwise, shall keep a register in which shall be entered at the time of sale, the date of sale, name, age, occupation and residence of every purchaser of such a pistol, revolver or other firearm, together with the calibre, make, model, manufacturer's number or other mark of identification on such pistol, revolver or other firearm. Such person shall also, before delivering the same to the purchaser, require such purchaser to produce a permit for possessing or carrying the same as required by law, and shall also enter in such register the date of such permit, the number thereon, if any, and the name of the magistrate or other officer by whom the same was issued. Every person who shall fail to keep a register and to enter therein the facts required by this section, or who shall fail to exact the production of a permit to possess or carry such pistol, revolver or other firearm, if such permit is required by law, shall be guilty of a misdemeanor. Such register shall be open at all reasonable hours for the inspection of any peace officer. Every person becoming the lawful possessor of such a pistol, revolver or other firearm, who shall sell, give or transfer the same to another person without first notifying the police authorities, shall be guilty of a misdemeanor. This section shall not apply to wholesale dealers. (Added by L. 1911, ch. 195, in effect Sept. 1, 1911.)

ARTICLE 174.

PUNISHMENT.

SECTION 1930. What persons are punishable criminally.
1931. Punishments, how determined.
1932. Punishment of corporation convicted of felony.
1933. Punishment of acts committed out of the state.
1934. Punishment of accessory to felony.
1935. Punishment of felonies when not fixed by statute.
1936. Punishment of accessory to misdemeanor.
1937. Punishment of misdemeanors when not fixed by statute.
1938. Punishment when different penalties are provided by different provisions of law.
1939. Mitigation of punishment in certain cases.
1940. Punishment for felony when person convicted has been previously convicted of a misdemeanor.
1941. Punishment for second offense of felony or petit larceny.
1942. Punishment for fourth conviction of felony.
1943. [Renumbered by L. 1909, ch. 524.]

§ 1930. What persons are punishable criminally.

The following persons are liable to punishment within the state:

1. A person who commits within the state any crime, in whole or in part;

2. A person who commits without the state any offense which, if committed within the state, would be larceny under the laws of the state, and is afterwards found, with any of the property stolen or feloniously appropriated within this state;

3. A person who, being without the state, causes, procures, aids, or abets another to commit a crime within the state;

4. A person who, being out of this state, abducts or kidnaps by force or fraud, any person contrary to the laws of the place where such act is committed, and brings, sends or conveys such person within the limits of this state, and is afterwards found therein;

5. A person who, being out of the state and with intent to cause within it a result contrary to the laws of this state does an act which in its natural and usual course results in an act or effect contrary to its laws.

Derivation: Penal Code, § 16.

§ **1931. Punishment, how determined.**

Whenever in this chapter the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this chapter.

Derivation: Penal Code, § 13, in part, as amended L. 1892, ch. 218. For remainder of section, see § 1932, *post*.

People v. Bauer (1885), 3 N. Y. Cr. 433, 37 Hun, 407; People ex rel. Zeese v. Masten (1894), 79 Hun, 580, 29 N. Y. Supp. 891.

§ **1932. Punishment of corporation convicted of felony.**

In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, such corporation is punishable by a fine of not more than five thousand dollars.

Derivation: Penal Code, § 13, in part, as amended L. 1892, ch. 218. For remainder of section, see § 1931, *ante*.

See cases under sec. 1831.

§ **1933. Punishment of acts committed out of the state.**

A person who commits an act without this state which affects persons or property within this state, or the public health, morals, or decency of this state, and which, if committed within this state, would be a crime, is punishable as if the act were committed within this state.

Derivation: Penal Code, § 676.

People v. Lyon (1885), 99 N. Y. 219, rev'g. 33 Hun, 623; People v. Martin (1902), 38 Misc. 67, rev'd 77 App. Div. 396, which was affirmed in 175 N. Y. 315, 76 N. Y. Supp. 953.

§ **1934. Punishment of accessory to felony.**

An accessory to a felony may be indicted, tried, and convicted, either in the county where he became an accessory, or in the county where the principal felony was committed, and whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, and although the principal has been pardoned or otherwise discharged after conviction.

Except in a case where a different punishment is specially prescribed by law, a person convicted as an accessory to a felony is

punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.

Derivation: Penal Code, §§ 32, 33.

Starin v. People (1871), 45 N. Y. 333; Jones v. People (1880), 20 Hun, 545; People v. Ryland (1884), 97 N. Y. 126; People v. Basford (1885), 3 N. Y. Cr. 219; People v. Booth (1907), 52 Misc. 340, 102 N. Y. Supp. 62; See also People v. Gray, 25 Wend, 464.

§ 1935. Punishment of felonies when not fixed by statute.

A person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this chapter, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment for not more than seven years, or by a fine of not more than one thousand dollars, or by both.

Derivation: Penal Code, § 14.

People v. Meakim (1892), 133 N. Y. 214, 8 N. Y. Cr. 308, 404, 416, aff'g 61 Hun, 327, 15 N. Y. Supp. 917.

§ 1936. Punishment of accessory to misdemeanor.

When an act or omission is declared by statute to be a misdemeanor, and no punishment for aiding or abetting in the doing thereof is expressly prescribed, every person who aids, or abets another in such act or omission is also guilty of a misdemeanor.

Derivation: Penal Code, § 682.

People v. Clark (1891), 8 N. Y. Cr. 179-198, 14 N. Y. Supp. 642.

§ 1937. Punishment of misdemeanors when not fixed by statute.

A person convicted of a crime declared to be a misdemeanor, for which no other punishment is specially prescribed by this chapter, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both.

Derivation: Penal Code, § 15.

People v. McTameney (1883), 30 Hun, 505, 13 Abb. N. C. 56, 1 N. Y. Cr. 437, 66 How. Pr. 75; People ex rel. Van Houton v. Sadler (1884), 97 N. Y. 146, 3 N. Y. Cr. 474; People ex rel. Devoe v. Kelly (1884), 97 N. Y. 212,

2 N. Y. Cr. 437; People ex rel. Stokes v. Risely (1885), 38 Hun, 280, 4 N. Y. Cr. 109; People v. Parr (1886), 4 N. Y. Cr. 545; People v. Palmer (1887), 43 Hun, 397, 5 N. Y. Cr. 107; People v. Carter (1888), 48 Hun, 165; Loos v. Wilkinson (1889), 51 Hun, 74, 5 N. Y. Supp. 410; People v. Meakim (1892), 133 N. Y. 214, 8 N. Y. Cr. 413, aff'g 61 Hun, 327, 15 N. Y. Supp. 917, 8 N. Y. Cr. 308; People v. Christy (1892), 65 Hun, 349, 20 N. Y. Supp. 278, 8 N. Y. Cr. 482; People v. Madill (1895), 11 N. Y. Cr. 136, 91 Hun, 152, 36 N. Y. Supp. 1130; Matter of Vanderhoff (1896), 15 Misc. 434, 36 N. Y. Supp. 833; People v. Knatt (1898), 156 N. Y. 305, rev'g 19 App. Div. 628, 46 N. Y. Supp. 1098; People ex rel. Frank v. Keeper (1902), 38 Misc. 238, 77 N. Y. Supp. 145; People v. Olcese (1903), 41 Misc. 102, 83 N. Y. Supp. 973; People ex rel. Lodes v. Dept. of Health (1907), 117 App. Div. 858, 103 N. Y. Supp. 275; People v. Schermerhorn (1908), 59 Misc. 148, 112 N. Y. Supp. 222; see also Burns v. Norton, 35 N. Y. St. 418, 15 N. Y. Supp. 75; Matter of Hallenbeck, 65 How. 501, 1 N. Y. Cr. 437.

§ 1938. Punishment when different penalties are provided by different provisions of law.

An act or omission which is made criminal and punishable in different ways, by different provisions of law, may be punished under any one of those provisions, but not under more than one; and a conviction or acquittal under one bars a prosecution for the same act or omission under any other provision.

Derivation: Penal Code, § 677.

Polinsky v. People (1877), 11 Hun, 390, aff'd 73 N. Y. 65; People ex rel. McDonald v. Keeler (1885), 99 N. Y. 475, rev'g 32 Hun, 563; People v. Krank (1888), 110 N. Y. 488, rev'g 46 Hun, 632; People v. Christy (1892), 65 Hun, 352, 20 N. Y. Supp. 278, 8 N. Y. Cr. 483; see also Blatchley v. Moser, 15 Wend. 215; People v. Church, 1 How. Pr. (N. S.) 366, citing 1 Bish. Crim. Law (7th Ed.) 778; City of Brooklyn v. Toynbee, 31 Barb, 282; Mayor v Hyatt, 3 E. D. Smith, 156; Rogers v. Jones, 1 Wend, 261; People v. Stevens, 15 Wend. 341; Mayor v. Allaire, 14 Ala. 404; Huffsmith v. People, 8 Colo. 175, 54 Am. Rep. 550; McRea v. Mayor, 59 Ga. 168, 27 Am. Rep. 390; Robbins v. People, 95 Ill. 178; Wragg v. Penn. Township, 94 Ill. 23; Waldo v. Wallace, 12 Ind. 584; Shafer v. Mumma, 17 Md. 331; State v. Lee, 29 Minn. 445; Brownsville v. Cook, 4 Neb. 105; State v. Sly, 4 Oreg. 278, 279; State v. Bergman, 6 Oreg. 343; State v. Williams, 11 S. C. 292; State v. Hamilton, 3 Tex. App. 643; McLaughlin v. Stevens, 2 Cranch, C. C. 149; Howe v. Plainfield, 8 Vroom, 150; Greenwood v. State, 6 Baxt. 567, 32 Am. Rep. 539; Hughes v. People, 7 Crim. L. Mag. 280, 285, note; Com. v. Trichey, 13 Allen, 559; Com. v. McConnell, 11 Gray, 204; Reg. v. Gilmore, 15 Cox Cr. Cas. 85, 36 Eng. Rep. 500.

§ 1939. Mitigation of punishment in certain cases.

Where it appears, at the time of passing sentence on a person *convicted that he* has already paid a fine or suffered an imprison-

ment for the act of which he stands convicted, under an order adjudging it a contempt, the court, passing sentence, may mitigate the punishment to be imposed, in its discretion.

Derivation: Penal Code, § 681.

§ 1940. Punishment for felony when person convicted has been previously convicted of a misdemeanor.

A person, who, having been convicted within this state of a misdemeanor, afterwards commits and is convicted of a felony, must be sentenced to imprisonment for the longest term prescribed for the punishment upon a first conviction for the felony.

Derivation: Penal Code, § 689.

§ 1941. Punishment for second offense of felony or petit larceny.

A person, who, after having been convicted within this state, of a felony, or an attempt to commit a felony, or of petit larceny, or, under the laws of any other state, government, or country, of a crime which, if committed within this state, would be a felony, commits any crime, within this state, is punishable upon conviction of such second offense, as follows:

1. If the subsequent crime is such that, upon a first conviction, the offender might be punished, in the discretion of the court, by imprisonment for life, he must be sentenced to imprisonment in a state prison for life;

2. If the subsequent crime is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term not less than the longest term, nor more than twice the longest term, prescribed upon a first conviction.

Derivation: Penal Code, § 688.

People v. Gibson (1875), 5 Hun, 542; People v. Raymond (1884), 32 Hun, 123, 96 N. Y. 38; People v. Cook (1887), 45 Hun, 37; People v. Price (1888), 6 N. Y. Cr. 141, 2 N. Y. Supp. 414; People v. Price (1889), 53 Hun, 185, 6 N. Y. Supp. 833, 119 N. Y. 650; People v. Bosworth (1892), 64 Hun, 72, 19 N. Y. Supp. 114, 45 N. Y. St. 512; People v. Sickles (1898), 156 N. Y. 541, 13 N. Y. Cr. 277, aff'g 26 App. Div. 470, 50 N. Y. Supp. 377; Kenny, People ex rel. v. Creamer (1898), 23 Misc. 13, 49 N. Y. Supp. 1037, 30 App. Div. 624, 53 N. Y. Supp. 1111; People v. Reilly (1900), 49 App. Div. 218, 63 N. Y. Supp. 18, 14 N. Y. Cr. 458, aff'g 164 N. Y. 600; People v. Johnston (1906), 112 App. Div. 812, 99 N. Y. Supp. 561, 20 Crim. Rep. 141, see also

People v. Caesar, 1 Park. 648, Parker, J.; People v. Stanley, 47 Cal. 113, 17 Am. Rep. 401; Kelly v. People, 115 Ill. 583, 56 Am. Rep. 184; Chetworth v. Com. (Ky.), 12 Crim. L. Mag. 234.

§ 1942. Punishment for fourth conviction of felony.

A person who, after having been three times convicted within this state, of felonies or attempts to commit felonies, or under the law of any other state, government or country, of crimes which if committed within this state would be felonies, commits a felony within this state, shall be sentenced upon conviction of such fourth, or subsequent, offense to imprisonment in a state prison for the term of his natural life, but after serving a period of time equal to the maximum penalty prescribed for the offense of which he is convicted, less the usual commutation for good conduct, shall become subject to the jurisdiction of the board of commissioners of paroled prisoners, and may be paroled upon such conditions as said board may prescribe, but said board shall not grant an absolute discharge to such prisoner.

Derivation: Penal Code, § 688a, added L. 1907, ch. 645.

People v. Fabian (1908), 126 App. Div. 95.

§ 1943. [Renumbered § 2461 by L. 1909, Ch. 524. In effect May 27, 1909.]

ARTICLE 176.

QUARANTINE.

SECTION 1960. Violation of quarantine laws by master of vessel.
1961. Giving false information; permitting person to land before visit of health officers.
1962. Landing from vessel before visit of health officers.
1963. Going on board vessel at quarantine grounds without leave.
1964. Violating quarantine regulations.

§ 1960. Violation of quarantine laws by master of vessel.

A master of a vessel subject to quarantine or visitation by the health officer, arriving in the port of New York, who refuses or omits:

1. To proceed to and anchor his vessel at the place assigned for quarantine, at the time of his arrival; or,

2. To submit his vessel, cargo and passengers, to the examination of the health officer, and to furnish all necessary information to enable that officer to determine the length of quarantine and other regulations to which they ought respectively to be subject; or,

3. To remain with his vessel at quarantine during the period assigned for her quarantine, and while at quarantine to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given to them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers or crew,

Is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

Derivation: Penal Code, § 391.

§ 1961. Giving false information; permitting person to land before visit of health officers.

A master of a vessel hailed by a pilot, who:

1. Gives false information to such pilot, relative to the condition of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required; or,

2. Lands any person from his vessel, or permits any person, except a pilot, to come on board of his vessel, or unlades or trans-

ships any portion of his cargo, before his vessel has been visited and examined by the health officers; or,

3. Approaches with his vessel nearer the city of New York than the place of quarantine to which he may be directed,

Is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or by both.

Derivation: Penal Code, § 392.

§ 1962. Landing from vessel before visit of health officers.

A person, who, being on board any vessel at the time of her arrival at the port of New York, lands from such vessel, or unlades, or transships, or assists in unlading or transshipping any portion of her cargo, before such vessel has been visited and examined by the health officers, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

Derivation: Penal Code, § 393.

§ 1963. Going on board vessel at quarantine grounds without leave.

A person who goes on board of, or has any communication or intercourse with any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority, enters the quarantine grounds or anchorage, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both; and in addition thereto he may be detained at quarantine so long as the health officer directs, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious or pestilential disease, during such twenty days, he may be detained at the marine hospital, for such further time as the health officer directs.

Derivation: Penal Code, § 394.

§ 1964. Violating quarantine regulations.

A person who, having been lawfully ordered by a health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or wilfully violates any quarantine law or regulation, is guilty of a misdemeanor.

Derivation: Penal Code, § 395.

ARTICLE 178.

RAILROADS.

SECTION 1980. Unlawful acts of and neglect of duty by railroad officials.
1981. Misconduct of public service commissioners and their employees.
1982. Person unable to read not to act or be employed as engineer; telegraph operators.
1983. Misconduct of officials or employees on elevated railroads.
1984. Intoxication or other misconduct of railroad or steamboat employees.
1985. Ringing bells and blowing whistles at crossings; obstructing highways.
1986. Placing passenger cars in front of other cars.
1987. Platforms and heating apparatus of passenger cars.
1988. Guard posts; automatic couplers.
1989. Inciting railroad employees not to wear uniform; unauthorized wearing of uniform.
1990. Riding on freight trains; boarding cars in motion; obstructing passage of car.
1991. Injuring railroad property and appurtenances; obstructing tracks.

§ 1980. Unlawful acts of and neglect of duty by railroad officials.

An officer, agent, attorney or employee of a railroad corporation, who:

1. Offers a place, appointment, position or any other consideration to a public service commissioner or to a secretary, clerk, agent, employee or expert employed by the public service commissions; or,

2. After due notice, neglects or refuses to make or furnish any statement or report lawfully required by the public service commissions, or wilfully hinders, delays or obstructs such commissioners in the discharge of their official duties,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 416, as amended L. 1892, ch. 692; L. 1893, ch. 692.

Mayor, etc. v. Starin (1887), 106 N. Y. 1.

§ **1981. Misconduct of public service commissioners and their employees.**

Any public service commissioner, or any secretary, clerk, agent, expert or other person employed by the public service commissions, who:

1. Directly or indirectly solicits or requests from or recommends to any railroad corporation, or to any officer, attorney or agent thereof, the appointment of any person to any place or position; or,

2. Accepts, receives or requests, either for himself or for any other person, any pass, gift or gratuity from any railroad corporation; or,

3. Secretly reveals to any railroad corporation, or to any officer, member, or employee thereof, any information gained by him from any other railroad corporation,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 417, as amended L. 1892, ch. 692.

§ **1982. Person unable to read not to act or be employed as engineer; telegraph operators.**

Any person unable to read the time tables of a railroad and ordinary handwriting, who acts as an engineer or runs a locomotive or train on any railroad in this state; or any person who, in his own behalf, or in the behalf of any other person or corporation, knowingly employs a person so unable to read to act as such engineer or to run any such locomotive; or who employs a person as a telegraph operator who is under the age of eighteen years, or who has less than one year's experience in telegraphing, to receive or transmit a telegraphic message or train order for the movement of trains, is guilty of a misdemeanor.

Derivation: Penal Code, § 418, as amended L. 1892, ch. 692; L. 1895, ch. 892.

§ **1983. Misconduct of officials or employees on elevated railroads.**

Any conductor, brakeman, or other agent or employee of an elevated railroad, who:

1. Starts any train or car of such railroad, or gives any signal or order to any engineer or other person to start any such train or car, before every passenger therein who manifests an intention

to depart therefrom by arising, or moving toward the exit thereof, has departed therefrom; or before every passenger on the platform or station at which the train has stopped, who manifests a desire to enter the train, has actually boarded or entered the same, unless due notice is given by an authorized employee of such railroad that the train is full, and that no more passengers can then be received; or,

2. Obstructs the lawful ingress or egress of a passenger to or from any such car; or,

3. Opens a platform gate of any such car while the train is in motion, or starts such train before such gate is firmly closed,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 419, as amended L. 1892, ch. 692.

§ 1984. Intoxication or other misconduct of railroad or steamboat employees.

1. Any person who, being employed upon any railway as engineer, conductor, baggage master, brakeman, switch-tender, fireman, bridge-tender, flagman, signal man, or having charge of stations, starting, regulating or running trains upon a railroad, or, being employed as captain, engineer or other officer of a vessel propelled by steam, is intoxicated while engaged in the discharge of any such duties; or,

2. An engineer, conductor, brakeman, switch-tender, or other officer, agent or employee of any railroad corporation, who wilfully violates or omits his duty as such officer, agent or employee, by which human life or safety is endangered, the punishment of which is not otherwise prescribed,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 420, as amended L. 1892, ch. 692.

§ 1985. Ringing bells and blowing whistles at crossings; obstructing highways.

A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell, or sound the whistle, upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a traveled road or street on the same level, except in cities, or to continue the ringing of such bell or sounding such whistle at

intervals, until such locomotive and the train to which the locomotive is attached shall have completely crossed such road or street, or any officer or employee of a corporation in charge of a locomotive, train or car, who shall wilfully obstruct, or cause to be obstructed, any farm or highway crossing with any locomotive, train or car for a longer period than five consecutive minutes, is guilty of a misdemeanor.

Derivation: Penal Code, § 421, as amended L. 1891, ch. 358; L. 1900, ch. 759.

Vandewater v. Railroad Co. (1892), 135 N. Y. 583, rev'g 63 Hun, 186, 17 N. Y. Supp. 652; Petrie v. Railroad Co. (1892), 66 Hun, 287, 21 N. Y. Supp. 159; Phillips v. Railroad Co. (1895), 84 Hun, 415, 32 N. Y. Supp. 299; Laible v. Railroad Co. (1897), 13 App. Div. 574, 43 N. Y. Supp. 1003; Petrie v. Railroad Co. (1901), 63 App. Div. 473, 71 N. Y. Supp. 866; Henavie v. Railroad Co. (1901), 166 N. Y. 284, rev'g 44 App. Div. 641, 60 N. Y. Supp. 752; Rich v. Pennsylvania R. R. Co. (1906), 112 App. Div. 821, 98 N. Y. Supp. 678; Burns v. D. & H. Co. (1906), 110 App. Div. 595, 96 N. Y. Supp. 509; Kurt v. Lake Shore, etc. R. Co. (1908), 127 App. Div. 842.

§ 1986. Placing passenger cars in front of other cars.

A person being an officer or employee of a railway company, who knowingly places, directs, or suffers a freight, lumber, merchandise or oil car to be placed in rear of a car used for the conveyance of passengers in a railway train is guilty of a misdemeanor.

Derivation: Penal Code, § 422, as amended L. 1889, ch. 267.

Bushby v. Railroad Co. (1887), 107 N. Y. 374, aff'g 37 Hun, 104.

§ 1987. Platforms and heating apparatus of passenger cars.

A railroad corporation, or any officer or director thereof having charge of its railroad, or any person managing a railroad in this state, or any person or corporation running passenger cars upon a railroad into or through this state, who:

1. Fails to have the platforms or ends of the passenger cars run upon such railroad constructed in such manner as will prevent passengers falling between the cars while in motion; or,

2. Except temporarily, in case of accident or emergency, heats any passenger car, while in motion, on any such railroad more that fifty miles in length, except a narrow-gauge railroad which runs only mixed trains, between October fifteenth and May first, by any stove or furnace inside of or suspended from such car,

except stoves of a pattern and kind approved by the public service commissions for cooking purposes in dining-room cars, and except within the extended time allowed by the public service commissions, in pursuance of law, for introducing other heating apparatus,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 423, as amended L. 1892, ch. 692.

§ **1988. Guard posts; automatic couplers.**

All corporations and persons other than employees, operating any steam railroad in this state:

1. Failing to cause guard posts to be placed in prolongation of the line of bridge trusses upon such railroad, so that in case of derailment, the posts and not the trusses shall receive the blow of the derailed locomotive or car; or,

2. Failing to equip all of their own freight cars, run and used in freight or other trains on such railroad, with automatic self-couplers, or running or operating on such railroad any freight car belonging to any such person or corporation, without having the same equipped, except in case of accident or other emergency, with automatic self-couplers, and except within the extended time allowed by the public service commisson, in pursuance of law, for equipping such car with such couplers, is guilty of a misdemeanor, punishable by a fine of five hundred dollars for each offense.

Derivation: Penal Code, § 424, as amended L. 1892, ch. 692; L. 1896, ch. 664.

Cleary v. Long Island R. Co. (1900), 54 App. Div. 284, 66 N. Y. Supp. 568.

§ **1989. Inciting railroad employees not to wear uniform; unauthorized wearing of uniform.**

A person who:

1. Advises or induces any one, being an officer, agent or employee of a railway company, to leave the service of such company, because it requires a uniform to be worn b ysuch officer, agent or employee, or to refuse to wear such uniform, or any part thereof; or,

2. Uses any inducement with a person employed by a railway company to go into the service or employment of any other railway company, because a uniform is required to be worn; or,

3. Wears the uniform designated by a railway company without authority,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 425.

§ **1990. Riding on freight trains; boarding cars in motion; obstructing passage of car.**

1. A person who rides on any engine or any freight or wood car of any railway company, without authority or permission of the proper officers of the company or of the person in charge of said car or engine; or,

2. Who gets on any car or train while in motion, for the purpose of obtaining transportation thereon as a passenger; or,

3. Who wilfully obstructs, hinders or delays the passage of any car lawfully running upon any steam or horse, or street railway,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 426, as amended L. 1890, ch. 458.

People ex rel. Gunn v. Webster (1894), 75 Hun, 278, 26 N. Y. Supp. 1007; Barrett v. Railroad Co. (1898), 157 N. Y. 667, rev'g 92 Hun, 606, 36 N. Y. Supp. 1121; Kolzem v. Railroad Co. (1892), 1 Misc. 148, 20 N. Y. Supp. 700; Sharp v. Erie Railroad Co. (1904), 90 App. Div. 504, 85 N. Y. Supp. 553; East v. Brooklyn Heights Railroad Co. (1906), 115 App. Div. 685, 101 N. Y. Supp. 364.

§ **1991. Injuring railroad property and appurtenances; obstructing tracks.**

A person who wilfully:

1. Displaces, loosens, removes, injures or destroys any rail, sleeper, switch, bridge, viaduct, culvert, embankment or structure or any part thereof, attached, appertaining to or connected with any railway, or by any other means attempts to wreck, destroy, or so damage any car, tender, locomotive or railway train or part thereof, while moving or standing upon any railway track in this state, as to render such car, tender, locomotive or railway train wholly or partially unfitted for its ordinary use, whether operated by steam, electricity or other motive power; or,

2. Places any obstruction upon the track of any such railway; or,

3. Wilfully destroys or breaks any guard erected or maintained by a railroad corporation as a warning signal for the protection *of its employees; or,*

4. Wilfully discharges a loaded fire-arm, or projects, or throws a stone or other missile at a railway train, or at a locomotive, car or vehicle standing or moving upon a railway; or,

5. Wilfully displaces, removes, cuts, injures or destroys any wire, insulator, pole, dynamo, motor, locomotive, or any part thereof, attached, appertaining to or connected with any railway operated by electricity, or wilfully interferes with or interrupts any motive power used in running such road, or wilfully places any obstruction upon the track of such railroad, or willfuly discharges a loaded fire-arm, or projects or throws a stone or any other missle at such railway train or locomotive, car or vehicle, standing or moving upon such railway; or,

6. Removes a journal brass from a car while standing upon any railroad track in this state, without authority from some person who has a right to give such authority,

Is punishable as follows: First. If thereby the safety of any person is endangered, by imprisonment for not more than twenty years. Second. In every other case by imprisonment for not more than five years.

Derivation: Penal Code, § 635, as amended L. 1890, ch. 280; L. 1892, ch. 692; L. 1895, ch. 726; L. 1897, ch. 183.

ARTICLE 180.

RAPE.

SECTION 2010. Rape defined.
2011. Penetration sufficient.
2012. When physical ability must be proved.
2013. No conviction for rape on unsupported testimony.

§ 2010. Rape defined.

A person who perpetrates an act of sexual intercourse with a female not his wife, against her will or without her consent; or,

1. When through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent, or, by reason of mental or physical weakness, or immaturity, or any bodily ailment, she does not offer resistance; or,

2. When her resistance is forcibly overcome; or,

3. When her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted upon her; or,

4. When her resistance is prevented by stupor, or weakness of mind produced by an intoxicating, or narcotic, or anæsthetic agent; or, when she is known by the defendant to be in such state of stupor or weakness of mind from any cause; or,

5. When she is, at the time, unconscious of the nature of the act, and this is known to the defendant; or when she is in the custody of the law, or of any officer thereof, or in any place of lawful detention, temporary or permanent,

Is guilty of rape in the first degree and punishable by imprisonment for not more than twenty years.

A person who perpetrates an act of sexual intercourse with a female, not his wife, under the age of eighteen years, under circumstances not amounting to rape in the first degree, is guilty of rape in the second degree, and punishable with imprisonment for not more than ten years.

Derivation: Penal Code, § 278, as amended L. 1882, ch. 384; L. 1887, ch. 693; L. 1892, ch. 325; L. 1895, ch. 460.

Dean v. Raplee (1895), 145 N. Y. 319, aff'g 75 Hun, 389, 27 N. Y. Supp. 438; People v. Nelson (1897), 153 N. Y. 90, 12 N. Y. Cr. 368, rev'g 91 Hun, 635, 36 N. Y. Supp. 1130; People v. Mosier (1902), 73 App. Div. 5, 9, 76 N.

Y. Supp. 65; People v. Green (1905), 103 App. Div. 79, 84, 92 N. Y. Supp. 508, 19 Crim. Rep. 316.

Subd. 1.—State v. Atherton, 58 Iowa, 189; Hornback v. State, 35 Ohio St. 277, 35 Am. Rep. 608; Queen v. Barratt, L. R., 2 Cr. Cas. Res. 81, 7 Eng. Rep. 320; Bloodworth v. State, 6 Baxt. 614, 32 Am. Rep. 546; State v. Crow, 10 West. L. Jour. 501.

Subd. 2.—People v. Dohring (1874), 59 N. Y. 374, 17 Am. Rep. 349; People v. Draper (1882), 28 Hun, 1, 1 N. Y. Cr. 138; People v. Bowles (1884), 3 N. Y. Cr. 447; People v. Clemons (1885). 37 Hun, 581, 3 N. Y. Cr. 565; People v. Connor (1891), 126 N. Y. 278; People v. Burns (1902), 73 App. Div. 613, 76 N. Y. Supp. 1022, 19 Am. L. Rev. 857; see also Gongleman v. People, 3 Park, 15; People v. Monnais, 17 Abb. 345; Don Moran v. People, 25 Mich, 356, 12 Am. Rep. 283; Oleson v. State, 11 Nebr. 276, 38 Am. Rep. 366; State v. Johnson, 67 N. C. 55; Williams v. State, 1 Tex. Ct. App. 90, 28 Am. Rep. 399; Whitaker v. State, 50 Wis. 518, 36 Am. Rep. 856; Smith v. Fingar, 1 Alb. L. 101; Reg. v. Hallett, 9 C. & P. 748; Reg. v. Fletcher, 8 Cox C. C. 131; Reg. v. Dee, 15 Cox. Cr. 579, 36 Eng. Rep. 615, 6 Crim. L. Mag. 220; Com. v. Fogerty, 8 Gray, 489.

Subd. 3.—Reg. v. Fletcher, L. R., 1 Cr. Cas. Res. 391, 19 Cox Cr. Cas. 248, 2 Bish. Crim. Law (6th Ed.)

Subd. 4.—People v. Quinn, 50 Barb. 128; Com. v. Burke, 105 Mass. 376, 7 Am. Rep. 531; Reg. v. Young, 14 Cox Cr. Cas. 114, 28 Eng. Rep. 548; Reg. v. Mayers, 12 Cox. Cr. Cas. 311, 4 Eng. Rep. 559.

Subd. 5.—Baccio v. People (1869), 41 N. Y. 265; Higgins v. People (1874), 58 N. Y. 377, aff'g 1 Hun, 317; Woods v. People (1874), 55 N. Y. 515, 14 Am. Rep. 309, rev'g 1 Th. & C. 610; Singer v. People (1878), 13 Hun, 418, aff'd 75 N. Y. 608; People v. Bowles (1884), 3 N. Y. Cr. 447; People v. Clemons (1885), 3 N. Y. Cr. 570; People v. Crowley (1886), 102 N. Y. 234; People v. Stott (1886), 5 N. Y. Cr. 61; People v. O'Sullivan (1887), 104 N. Y. 481, 58 Am. Rep. 530, citing Whart. Crim. Ev. 35, 46, 49; People v. Sharp (1887), 107 N. Y. 427, rev'g 45 Hun, 460; People v. Patterson (1888), 50 Hun, 44, 2 N. Y. Supp. 376; People v. Maxon (1890), 57 Hun, 367, 10 N. Y. Supp. 593; Zopfit v. Smith (1890), 55 Hun, 547, 8 N. Y. Supp. 876; People v. Flaherty (1894), 79 Hun, 48, 29 N. Y. Supp. 641, 9 N. Y. Cr. 253, aff'd 145 N. Y. 597; People v. Grauer (1896), 12 App. Div. 465, 42 N. Y. Supp. 721; People v. Nelson (1897), 153 N. Y. 90, 12 N. Y. Cr. 368, rev'g 91 Hun, 635, 36 N. Y. Supp. 1130; People v. Freeman (1898), 25 App. Div. 583, 50 N. Y. Supp. 984; People v. Flaherty (1900), 162 N. Y. 532, rev'g 27 App. Div. 535, 50 N. Y. Supp. 574; People v. Ragone (1900), 54 App Div. 498, 67 N. Y. Supp. 23; People v. Dickerson (1901), 58 App. Div. 202, 68 N. Y. Supp. 715, 15 N. Y. Cr. 365; People v. Garner (1901), 64 App. Div. 410, 72 N. Y. Supp. 66, aff'd 165 N. Y. 585; People v. Mosier (1902), 73 App. Div. 9, 76 N. Y. Supp. 65, 16 N. Y. Cr. 541; People v. Estell (1905), 106 App. Div. 517, 94 N. Y. Supp. 748; see also People v. Abbott, 19 Wend. 192; People v. Aldrich, 11 N. Y. Supp. 464; Brown v. People, 7 How. 171; Conkey v. People, 1 Abb. Dec. 418, 5 Park. 31; Crossman v. Bradley, 53 Barb. 125; Hays v. People, 1 Hill, 351; People v. Jackson, 3 Park 391; People v. McGee, 1 Den. 19; People v. Stamford, 2 Wheel. Cr. Cas. 152; Woodin v. People, 1 Park. 464; Lawson v. State, 20

Ala. 65, 66 Am. Dec. 182; Barnes v. State, 88 Ala. 204, 16 Am. St. Rep. 48; Dawson v. State, 29 Ark. 116; People v. Benson, 6 Cal, 221; People v. Mayes, 66 Cal. 597, 56 Am. Rep. 126; State v. Kinney, 44 Conn. 153, 26 Am. Rep. 436; see also 80 Am. Dec. 371, note; Stephen v. State, 11 Ga. 225; State v. Walters, 45 Iowa, 389; Sherwin v. People, 69 Ill. 55; State v. Robinson, 38 La. Ann. 618, 58 Am. Rep. 201; State v. Tilman, 30 La. Ann. 1249, 31 Am. Rep. 236; Com. v. Roosnell, 143 Mass. 32; Com. v. Murphy, 165 Mass. 66, 30 L. R. A. 735; Com. v. Nichols, 114 Mass. 285; Shartzer v. State, 63 Md. 149, 52 Am. Rep. 501; Strang v. People, 24 Mich. 1; State v. Vandnais, 31 Minn. 382; State v. Patterson, 88 Mo. 88, 57 Am. Rep. 374; State v. Way, 5 Nebr. 287; Oleson v. State, 11 Nebr. 276, 38 Am. Rep. 366; State v. Murray, 63 N. C. 31; State v. Knapp, 45 N. H. 156; State v. Marvin, 35 N. H. 22; State v. Wallace, 9 N. H. 515; Clivir v. State, 45 N. J. L. 46; O'Meara v. State, 17 Ohio St. 515; Moore v. State, 17 Ohio, 521; Hornbeck v. State, 35 Ohio St. 277, 35 Am. Rep. 608; Sharp v. State, 15 Tex. App. 171; State v. Reed, 39 Vt. 417; Hardtke v. State, 67 Wis. 552; Reg. v. Connelly, 26 Upp. Can. Q. B. 323; Reg. v. Rearden, 4 F. & F. 76; Reg. v. Jones, 4 Law Rep. 154; Rex. v. Chambers, 3 Cox Cr. Cas. 92; Williams v. State, 8 Humphr. 585; Com. v. Lahey, 14 Gray, 92; Com. v. Merriam, 14 Pick. 518; Benstine v. State, 2 Lea, 169, 31 Am. Rep. 593; Reg. v. Wood, 14 Cox Cr. Cas. 46, 20 Eng. Rep. 393; Reg. v. Langfield, 58 Law Times (Folio) 127; Reg. v. Riley, 18 Q. B. Div. 481, 38 Eng. Rep. 537; Titus v. State, 7 Baxt. 132; Com. v. Regan, 105 Mass. 593; State v. Turner, 1 Houst. 76; Reg. v. Holmes, L. R., 1 Cr. Cas. Res. 334, 12 Cox. Cr. Cas. 137, 1 Eng. Rep. 226.

§ 2011. Penetration sufficient.

Any sexual penetration, however slight, is sufficient to complete the crime.

Derivation: Penal Code, § 280.

People v. Crowley (1886), 102 N. Y. 237, 4 N. Y. Cr. 168; People v. Tench (1901), 167 N. Y. 520, rev'g 59 A. D. 627; People v. Estell (1905), 106 App. Div. 516, 518, 94 N. Y. Supp. 748; see also Brown v. State, 76 Ga. 623; Taylor v. State, 111 Ind. 279; Reg. v. Hughes, 9 C. & P. 752.

§ 2012. When physical ability must be proved.

No conviction for rape can be had against one who was under the age of fourteen years, at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, beyond a reasonable doubt.

Derivation: Penal Code, § 279.

People v. Croucher, 2 Wheel. Cr. Cas. 42; People v. Randolph, 2 Park. 174, 213; Williams v. State, 14 Ohio, 222, 45 Am. Dec. 536; Hitabiddle v. State, 35 Ohio St. 52, 35 Am. Rep. 595; Foster v. Com., 96 Va. 306, 42 L. R. A. 589; Wagoner v. State, 5 Lea. 352, 40 Am. Rep. 36.

§ 2013. No conviction for rape on unsupported testimony.

No conviction can be had for rape or defilement upon the testimony of the female defiled, unsupported by other evidence.

Derivation: Penal Code, § 283, as amended L. 1886, ch. 663.

Kenyon v. People (1863), 26 N. Y. 203; People v. Plath (1885), 100 N. Y. 590, 4 N. Y. Cr. 53; People v. Powell (1886), 4 N. Y. Cr. 586; People v. Stott (1886), 5 N. Y. Cr. 61; People v. Crowley (1886), 102 N. Y. 234; People v. O'Sullivan (1887), 104 N. Y. 481; People v. Kearney N. Y. 481; People v. O'Sullivan (1887), 104 N. Y. 481; People v. Kearney (1888), 110 N. Y. 188, rev'g 47 Hun, 129; People v. Terwilliger (1893), 74 Hun, 310, 26 N. Y. Supp. 674; People v. Flaherty (1894), 79 Hun, 48, 29 N. Y. Supp. 641, 9 N. Y. Cr. 253, aff'd 145 N. Y. 597; People v. Grauer (1896), 12 App. Div. 464, 42 N. Y. Supp. 721; People v. Flaherty (1898), 27 App. Div. 535, 50 N. Y. Supp. 574, conviction reversed, 152 N. Y. 540; People v. Page (1900), 162 N. Y. 272, 14 N. Y. Cr. 517, rev'g 20 App. Div. 637, 47 N. Y. Supp. 1145; People v. Butler (1900), 55 App. Div. 361, 66 N. Y. Supp. 851, 15 N. Y. Cr. 207.; People v. Panyko (1902), 71 App. Div. 324, 75 N. Y. Supp. 945, 16 N. Y. Cr. 438; People v. Miller (1902), 70 App. Div. 592, 75 N. Y. Supp. 655, 16 N. Y. Cr. 396; People v. Swasey (1902), 77 App. Div. 185, 78 N. Y. Supp. 1103, 17 N. Y. Cr. 138; People v. Haischer (1903), 81 App. Div. 559, 81 N. Y. Supp. 79, 17 N. Y. Cr. 287; People v. Green (1905), 103 App. Div. 79, 92 N. Y. Supp. 508; People v. Biglizen (1906), 112 App. Div. 225, 98 N. Y. Supp. 361; People v. Smith (1906), 114 App. Div. 513, 100 N. Y. Supp. 259; see also People v. Brandt, 14 N. Y. St. 419, aff'd 110 N. Y. 647; Conkey v. People, 1 Abb. Dec. 418; Crandall v. People, 2 Lans. 309; People v. Cullen, 5 N. Y. Supp. 886; People v. Kirwan, 22 N. Y. Supp. 160; People v. Morris, 12 N. Y. Supp. 492, 35 N. Y. St. 942; Woodin v. People, 1 Park, 464.

ARTICLE 182.

REAL PROPERTY.

SECTION 2030. Contracts in relation to Indian lands.
2031. Buying lands in suit of person not in possession.
2032. Buying pretended titles to real property.
2033. Mortgage of lands under adverse possession not prohibited.
2034. Forcible entry and detainer.
2035. Returning to take possession of lands after being removed by legal process.
2036. Unlawful intrusion on real property.
2037. Person leaving the state to elude provisions of this article.
2038. Witnesses' privilege.
2039. Unauthorized applications for loans upon real property.

§ 2030. Contracts in relation to Indian lands.

A person who without the authority and consent of the legislature, in any manner or for or on any terms, purchases any lands within this state of any Indian residing therein, or makes any contract with any Indian for or concerning the sale of any lands within this state, or gives, sells, demises, conveys or otherwise disposes of any such lands, or any interest therein, or offers so to do, or enters upon or takes possession of or settles upon any such lands, by pretext or color of any right or interest in the same, in consequence of any such purchase, or contract made or to be made, since October fourteenth, seventeen hundred and seventy-five, is guilty of a misdemeanor.

Derivation: Penal Code, § 384a, added L. 1893, ch. 692.

§ 2031. Buying lands in suit of person not in possession.

A person who takes a conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any Court, knowing the pendency of such suit and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor.

Derivation: Penal Code, § 129.

Meigs v. Roberts (1899), 42 App. Div. 290, 59 N. Y. Supp. 215; Arents v. Long Island R. Co. (1899), 36 App. Div. 379, 55 N. Y. Supp. 401; Danzinger v. Boyd (1890), 120 N. Y. 628, aff'g 55 N. Y. Super. 537; City Real

Estate Co. v. Clark (1902), 36 Misc. 709, 714, 74 N. Y. Supp. 405; see also Chamberlain v. Taylor (Ct. of App.), 12 Abb. N. C. 473.

§ 2032. Buying pretended titles to real property.

A person who buys or sells, or in any manner procures, or takes or makes any covenant or promise to convey any right, or title real or pretended, to any lands or tenements, unless the grantor thereof or the person making such covenant or promise has been in possession, or he and those by whom he claims, have been in possession of the same or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such covenant or promise made, is guilty of a misdemeanor.

Derivation: Penal Code, § 130.

§ 2033. Mortgage of lands under adverse possession not prohibited.

Sections two thousand and thirty-one and two thousand and thirty-two shall not be construed to prevent any person having a just title to lands in the adverse possession of another, from executing a mortgage upon such lands, nor shall said sections apply to any conveyance or release of lands or tenements to any person in the lawful possession thereof.

Derivation: Penal Code, § 131, as amended L. 1888, ch. 282.

§ 2034. Forcible entry and detainer.

A person, guilty of using, or of procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and the manner allowed by law, is guilty of a misdemeanor.

Derivation: Penal Code, § 465.

McMorris v. Howell (1903), 89 App. Div. 272, 277, 85 N. Y. Supp. 1018; see also People v. Anthony, 4 Johns. 198; Cain v. Flood, 21 Civ. Proc. 116, 38 N. Y. St. 197, 14 N. Y. Supp. 776; People v. Carter, 29 Barb. 208; Carter v. Newbold, 7 How. 166; People v. Farrell, 28 N. Y. St. 43, 8 N. Y. Supp. 232; People v. Field, 52 Barb. 198, 58 Barb. 570, 1 Lans. 222; People v. Leonard, 11 Johns. 504; Mather v. Hood, 8 Johns. 44; Mickle's Case, 1 City Hall Rec. 96; Mickle v. Edwards, 1 City Hall Rec. 119; People v. Nelson, 13 Johns. 340; People v. Reed, 11 Wend. 147; People v. Rickert, 8 Cow. 226; People v. Shaw, 1 Cai. 125; People v. Smith, 24 Barb, 15; People v. Van Nostrand, 9 Wend. 50; People v. Wilson, 13 How. 446; Matthews v. Fers-

tell, 8 Leg. Inst. 22; State v. Pearson, 2 N. H. 550; People v. Godfrey, 1 Hall, 240.

§ **2035. Returning to take possession of lands after being removed by legal process.**

A person, who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterwards, without authority of law, returns to settle or reside upon or take possession of such lands, is guilty of a misdemeanor.

Derivation: Penal Code, § 466.

§ **2036. Unlawful intrusion on real property.**

A person, who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority; and a person who places, erects, or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor.

Derivation: Penal Code, § 467.

People v. Stevens (1888), 109 N. Y. 159; People v. Bates (1894), 79 Hun, 584, 29 N. Y. Supp. 894; Hewitt v. Newburger (1894), 141 N. Y. 538, rev'g 66 Hun, 230, 20 N. Y. Supp. 913.

§ **2037. Person leaving the state to elude provisions of this article.**

A person who leaves the state, with intent to elude any provision of the last three sections, or to commit any act without the state, which is prohibited by the last three sections, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of the last three sections, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

Derivation: Penal Code, § 461.

§ **2038. Witnesses' privilege.**

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in sec-

tions two thousand and thirty-four, two thousand and thirty-five and two thousand and thirty-six, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

Derivation: Penal Code, § 469.

§ 2039. Unauthorized applications for loans upon real property.

In cities of the first and second class, any person who shall make application to any other person, or to any corporation, for a loan upon any real property without the written authority of the owner of such real property, or of his attorney in fact, appointed in writing, or of a person who has made a written contract for the purchase of such property with the owner thereof, shall be guilty of a misdemeanor.

Derivation: Code Civ. Proc., § 1679, in part.

ARTICLE 184.

RECORDS AND DOCUMENTS.

SECTION 2050. Injury to public record.
2051. Offering false or forged instruments to be filed or recorded.

§ 2050. Injury to public record.

A person who, wilfully and unlawfully removes, mutilates, destroys, conceals, or obliterates a record, map, book, paper, document, or other thing, filed or deposited in a public office or with any public officer by authority of law, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.

Derivation: Penal Code, § 94.

People v. Wise (1885), 3 N. Y. Cr. 303, 2 How. Pr. (N. S.) 92; People v. Peck (1893), 138 N. Y. 286, aff'g 67 Hun, 560, 22 N. Y. Supp. 576; People v. Mills (1904), 178 N. Y. 274, aff'g 91 App. Div. 331, 18 N. Y. Crim. Rep. 279, 86 N. Y. Supp. 529; People v. Herzog (1905), 47 Misc. 50, 93 N. Y. Supp. 357; see also Ayres v. Covill, 19 Barb. 263.

§ 2051. Offering false or forged instruments to be filed or recorded.

A person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, is guilty of felony.

Derivation: Penal Code, § 95.

§ 2052. Stealing, destruction, mutilation or concealment of will or other testamentary instrument.

A person who steals or for any fraudulent purpose destroys, mutilates or conceals a will, codicil or other testamentary instrument, or who aids, assists, advises or conspires with another to steal or for any fraudulent purpose to destroy, mutilate or conceal a will, codicil or other testamentary instrument shall be guilty of a felony punishable by imprisonment for not more than five years or by a fine not exceeding one thousand dollars, or by both. An indictment for a violation of this section need not contain any allegation of value or ownership. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture: but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary *or otherwise, and* no testimony so given or produced shall be *received against him upon any* criminal investigation or proceeding. *(Added by L. 1910, ch. 357,* in effect Sept. 1, 1910.)

ARTICLE 186.

RELIGION.

SECTION 2070. Preventing performance of religious act.
2071. Disturbing religious meetings.
2072. Definition of the offense.
2073. Compelling adoption of a form of belief.
2074. Preventing presentation of living characters representing the Divine Person.

§ 2070. Preventing performance of religious act.

A person who wilfully prevents by threats or violence another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

Derivation: Penal Code, § 273.

§ 2071. Disturbing religious meetings.

A person who wilfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts enumerated in the next section, is guilty of a misdemeanor.

Derivation: Penal Code, § 274.

Wall v. Lee (1865), 34 N. Y. 141; People v. Crowley (1881), 23 Hun, 412; Steinert v. Sobey (1897), 14 App. Div. 505, 44 N. Y. Supp. 146; see also Becket v. Lawrence, 7 Abb. Pr. (N. S.) 403; People v. Brown, 1 Wheel. Cr. Cas. 124; People v. Degey, 2 Wheel. Cr. Cas. 135; Farren v. Warren, 3 Wend. 253; First Bap. Ch. v. Utica & Schen. R. Co. 6 Barb. 319, 5 Barb. 79; Foster v. Smith, 10 Wend. 377; State v. Smith, 5 Harring. 490; Reed v. Inglis, 12 U. C. C. P. 191.

§ 2072. Definition of the offense.

The following acts, or any of them, except as permitted by section two hundred and eighty-two of membership corporations law, constitute a disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting;

2. Engaging in, or promoting, within two miles of the place where a religious meeting is held, any racing of animals or gambling of any description; or elsewhere than in a city or village

keeping open any huckster shop, inn, store or grocery, in any other place than that in which such business shall have usually been carried on; or elsewhere than in a city exhibiting within the distance aforesaid any shows or plays, unless the same shall have been duly licensed by the proper authorities;

3. Obstructing in any manner without authority of law, within the like distance, free passage along a highway to the place of such meeting.

Derivation: Penal Code, § 275, as amended L. 1893, ch. 292.

People v. Miles (1908), 123 App. Div. 871, 108 N. Y. Supp. 510.

§ 2073. Compelling adoption of a form of belief.

An attempt by means of threats or violence, to compel any person to adopt, practice or profess a particular form of religious belief, is a misdemeanor.

Derivation: Penal Code, § 272.

§ 2074. Preventing presentation of living characters representing the Divine Person.

No person, association of persons, company, or corporation shall in any public or private place, hall, theatre, or auditorium present or enact or suffer to be presented or enacted any exhibition, play, drama, tragedy, opera, comedy, or performance in which there shall be a living character representing the deity or known by any appellation which by the recognized standards of any particular form of religious worship or belief indicates the deity or is reasonably referable alone to such deity, which is worshipped, reverenced, adored, or venerated by any religious denomination or sect or class of people professing a particular and well-defined form of religious belief and practice. Any violation of this section shall be a misdemeanor. Any license granted to the owner, proprietor, or manager of the place where the offense is committed must upon conviction of this offense be revoked. (Added by L. 1911, ch. 319, in effect Sept. 1, 1911.)

ARTICLE 188.

RIOTS AND UNLAWFUL ASSEMBLIES.

SECTION 2090. Riot defined.
2091. Punishment of riot.
2092. Unlawful assemblies.
2093. Remaining present at place of riot or unlawful assembly after warning.
2094. Remaining present at place of a meeting, originally lawful, after it has adopted an unlawful purpose.
2095. Refusing to assist in arresting rioter.
2096. Leaving state with intent to elude provisions of this article.
2097. Witnesses' privilege.

§ 2090. Riot defined.

Whenever three or more persons, having assembled for any purpose, disturb the public peace, by using force or violence to any other person, or to property, or threaten or attempt to commit such disturbance, or to do an unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they are guilty of riot.

Derivation: Penal Code, § 449.

People v. White (1865), 32 N. Y. 465, aff'g 55 Barb. 606; Marshall v. City of Buffalo (1900), 50 App. Div. 149, 65 N. Y. Supp. 411; Matter of Howard (1905), 110 App. Div. 61, 97 N. Y. Supp. 23; Adamson v. City of N. Y. (1907), 188 N. Y. 255, aff'g 110 App. Div. 58, 96 N. Y. Supp. 907; see also Rodman's case, 2 City Hall Rec. 88; Scott's case, 2 City Hall Rec. 25; Spies v. People, 122 Ill., 1, 3 Am. St. Rep. 320; State v. Brown, 69 Ind. 95, 35 Am. Rep. 210.

§ 2091. Punishment of riot.

A person guilty of riot or of participating in a riot, either by being personally present, or by instigating, promoting, or aiding the same, is punishable as follows:

1. If the purpose of the assembly, or of the acts done or threatened or intended by the persons engaged, is to resist the enforcement of a statute of this state, or of the United States, or to obstruct any public officer of this state, or of the United States, in serving or executing any process or other mandate of a court of competent jurisdiction, or in the performance of any other duty; or if the offender carries, at the time of the riot, fire-arms or any other dangerous weapon, or is disguised; by imprisonment

for not more than five years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

2. In any other case, if the offender directs, advises, encourages, or solicits other persons, present or participating in the riot or assembly, to acts of force or violence, by imprisonment for not more than two years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

3. In any case, not embraced within the foregoing subdivisions of this section, by imprisonment for not more than one year, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

Derivation: Penal Code, § 450.

§ 2092. Unlawful assemblies.

Whenever three or more persons:

1. Assemble with intent to commit any unlawful act by force; or,

2. Assemble with intent to carry out any purpose in such a manner as to disturb the public peace; or,

3. Being assembled attempt or threaten any act tending towards a breach of the peace, or an injury to person or property, or any unlawful act;

Such an assembly is unlawful, and every person participating therein by his presence, aid or instigation, is guilty of a misdemeanor.

But this section shall not be so construed as to prevent the peaceable assembling of persons for lawful purposes of protest or petition.

Derivation: Penal Code, § 451, as amended L. 1892, ch. 384.

People v. Most (1891), 128 N. Y. 108, 8 N. Y. Cr. 273, 26 Am. St. Rep. 458; see also State v. Wood, 9 Bosw. 15.

§ 2093. Remaining present at place of riot or unlawul assembly after warning.

A person, remaining present at the place of an unlawful assembly or riot, after the persons assembled have been warned to disperse by a magistrate or public officer, is guilty of a misdemeanor, unless as a public officer, or at the request or command of a public officer, he is endeavoring or assisting to disperse

the same, or to protect persons or property, or to arrest the offenders.

Derivation: Penal Code, § 454.

§ **2094. Remaining present at place of a meeting, originally lawful, after it has adopted an unlawful purpose.**

Where three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to a riot, if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, or such act is committed, except public officers and persons assisting them in attempting to dispere the assembly, is guilty of a misdemeanor.

Derivation: Penal Code, § 455.

§ **2095. Refusing to assist in arresting rioter.**

A person, present at the place of an unlawful assembly or riot, who, being commanded by a duly authorized public officer to act or aid in suppressing the riot, or in protecting persons or property, or in arresting a person guilty of or charged with participating in the unlawful assembly or riot, neglects or refuses to obey such command, is guilty of a misdemeanor.

Derivation: Penal Code, § 456.

§ **2096. Leaving state with intent to elude provisions of this article.**

A person who leaves the state, with intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

Derivation: Penal Code, § 461.

§ **2097. Witnesses' privilege.**

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article, upon the ground that the evidence might tend to convict him of a crime. But such evideuce shall not be received against him upon any criminal proceeding.

Derivation: Penal Code, § 469.

ARTICLE 190.

ROBBERY.

SECTION 2120. Robbery defined.
2121. Force or fear must be employed.
2122. Degree of force immaterial.
2123. Taking property secretly not robbery.
2124. Robbery in first degree.
2125. Punishment of robbery in first degree.
2126. Robbery in second degree.
2127. Punishment of robbery in second degree.
2128. Robbery in third degree.
2129. Punishment of robbery in third degree.

§ 2120. Robbery defined.

Robbery is the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery.

Derivation: Penal Code, § 224.

Brooks v. People (1872), 49 N. Y. 436, 10 Am. Rep. 398; Murphy v. People (1874), 3 Hun, 114, 5 Th. & C. 302; Mahoney v. People (1874), 3 Hun, 202, 5 Th. & C. 329; Hope v. People (1880), 83 N. Y. 426, 38 Am. Rep. 460; People v. McGinty (1881), 24 Hun, 62; People v. Glynn (1889), 54 Hun, 332, 7 N. Y. Supp. 555, aff'd without opinion 123 N. Y. 631; People v. Rose (1889), 52 Hun, 33, 4 N. Y. Supp. 787; People v. O'Neil (1889), 6 N. Y. Cr. 226, 4 N. Y. Supp. 410; People v. DuVeau (1905), 105 App. Div. 381, 382, 94 N. Y. Supp. 225; People v. Munroe (1907), 119 App. Div. 705, 104 N. Y. Supp. 675, 21 N. Y. Cr. Rep. 210; Bloomer v. People, 1 Abb. Ct. App. Dec. 146; People v. Hall, 6 Park, 642; McCloskey v. People, 5 Park, 299; People v. McDaniels, 1 Park, 198; see also Evans v. State, 80 Ala. 4; Bussey v. State, 71 Ga. 100, 51 Am. Rep. 256; Long v. State, 12 Ga. 293; Shinn v. State, 64 Ind. 13, 31 Am. Rep. 110; Com. v. Humphreys, 7 Mass. 242; State v. Sommers, 12 Mo. App. 374; State v. Gorham, 55 N. H. 152; Rex v. Cannon, R. & R. 146, 1 Hale 533.

§ 2121. Force or fear must be employed.

To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it does not constitute robbery.

Derivation: Penal Code, § 225.

Mahoney v. People (1874), 3 Hun, 202, 59 N. Y. 659; People v. Glynn (1889), 54 Hun, 332, 7 N. Y. Supp. 555, aff'd without opinion, 123 N. Y. 631; see also People v. Foley, 9 N. Y. St. 34, 27 Week. Dig. 217; McCloskey v. People, 5 Park, 299.

§ 2122. Degree of force immaterial.

When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

Derivation: Penal Code, § 226.

Mahoney v. People (1874), 3 Hun, 202, 59 N. Y. 659; People v. McGinty (1881), 24 Hun, 62; see also People v. Foley, 27 Week. Dig. 217, 9 N. Y. St. 34.

§ 2123. Taking property secretly not robbery.

The taking of property from the person of another is robbery, when it appears that although the taking was fully completed without his knowledge, such knowledge was prevented by the use of force or fear.

Derivation: Penal Code, § 227.

Norris' Case, 6 City Hall Rec. 86.

§ 2124. Robbery in first degree.

An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this article is robbery in the first degree, when committed by a person:

1. Being armed with a dangerous weapon; or,
2. Being aided by an accomplice actually present; or,
3. When the offender inflicts grievous bodily harm or injury upon the person from whose possession, or in whose presence, the property is taken, or upon the wife, husband, servant, child, or inmate of the family of such person, or any one in his company at the time, in order to accomplish the robbery.

Derivation: Penal Code, § 228.

People v. McInerney (1886), 5 N. Y. Cr. 48; People v. Glynn (1889), 54 Hun, 332, 7 N. Y. Supp. 555, aff'd 123 N. Y. 631; People v. Flanagan (1897), 22 App. Div. 516, 48 N. Y. Supp 241,12 N. Y. Cr. 516; People v. Stack (1899), 41 App. Div. 548, 58 N. Y. Supp. 691; People v. DuVeau (1905), 105 App. Div. 381, 382, 387, 94 N. Y. Supp. 225; People v. Jaffe (1906), 185 N. Y. 497, 19 Cr. Rep. 278, rev'g 112 App. Div. 516, 98 N. Y. Supp. 486; People v. McKenna (1907), 118 App. Div. 766, 103 N. Y. Supp. 870; People v. Munroe (1908), 190 N. Y. 437, rev'g 119 App. Div. 705, 104 N. Y. Supp. 675, 21 Cr. Rep. 210.

§ **2125. Punishment of robbery in first degree.**

Robbery in the first degree is punishable by imprisonment for a term not exceeding twenty years.

Derivation: Penal Code, § 231, as amended L. 1892, ch. 662.

People v. Munroe (1907), 119 App. Div. 705, 104 N. Y. Supp. 675, 21 Cr. Rep. 210.

§ **2126. Robbery in second degree.**

Such unlawful taking or compulsion, when accomplished by force or fear, in a case specified in the foregoing sections of this article, but not under circumstances amounting to robbery in the first degree, is robbery in the second degree, when accomplished:

1. By the use of violence; or,

2. By putting the person robbed in fear of immediate injury to his person or that of someone in his company.

Derivation: Penal Code, § 229.

People v. Holfelder (1887), 5 N. Y. Cr. 179; People v. Munroe (1907), 119 App. Div. 705, 104 N. Y. Supp. 675, 21 Crim. Rep. 211.

§ **2127. Punishment of robbery in second degree.**

Robbery in the second degree is punishable by imprisonment for a term not exceeding fifteen years.

Derivation: Penal Code, § 232, as amended L. 1892, ch. 662.

§ **2128. Robbery in third degree.**

A person who robs another, under circumstances not amounting to robbery in the first or second degree, is guilty of robbery in the third degree.

Derivation: Penal Code, § 230.

People v. Munroe (1907), 119 App. Div. 705, 104 N. Y. Supp. 675, 21 Cr. Rep. 210.

§ **2129. Punishment of robbery in third degree.**

Robbery in the third degree is punishable by imprisonment for not more than ten years.

Derivation: Penal Code, § 233.

People v. Munroe (1907), 119 App. Div. 705, 104 N. Y. Supp. 675.

ARTICLE 192.

SABBATH.

SECTION 2140. The Sabbath.
2141. Sabbath breaking.
2142. Punishment for Sabbath breaking.
2143. Labor prohibited on Sunday.
2144. Persons observing another day as a Sabbath.
2145. Public sports on Sunday.
2146. Trades, manufactures, and mechanical employments prohibited on Sunday.
2147. Public traffic on Sunday.
2148. Serving process on Sunday.
2149. Forfeiture of commodities exposed for sale on Sunday.
2150. Maliciously serving process on Saturday on person who keeps Saturday as holy time.
2151. Processions and parades on Sunday.
2152. Theatrical and other performances on Sunday.
2153. Barbering on Sunday.

§ 2140. The Sabbath.

The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

Derivation: Penal Code, § 259.

Smith v. Wilcox (1862), 24 N. Y. 353; Neuendorff v. Duryea (1877), 69 N. Y. 557, aff'g 6 Daly, 276; Matter of Agudath Hakehiloth (1896), 18 Misc. 717, 42 N. Y. Supp. 985; People v. Havnor (1896), 149 N. Y. 194, aff'g 1 App. Div. 459, 37 N. Y. Supp. 314; People ex rel. Bedell v. DeMott (1902), 38 Misc, 171, 172, 77 N. Y. Supp 249, 16 N. Y. Cr. 552; Dunham v. Binghampton & L. B. B. Assn. (1904), 44 Misc. 114, 89 N. Y. Supp. 762; People v. Poole (1904), 44 Misc. 119, 89 N. Y. Supp. 773; Brighton Athletic Club v. McAdoo (1905), 47 Misc. 432, 434, 94 N. Y. Supp. 391; Eden Musee Co. v. Bingham (1908), 58 Misc. 646, 108 N. Y. Supp. 200; Moore v. Owen (1908), 58 Misc. 335, 109 N. Y. Supp. 585; United Vaudeville Co. v. Zeller (1908), 58 Misc. 17, 108 N. Y. Supp. 189; see also Andrews v. Bible Society, 4 Sandf. 156; People v. Ball, 42 Barb. 324; People v. Hoym, 20 How. Pr. 76; Lindenmuller v. People, 33 Barb. 568, 569, 21 How. Pr. 156; People v. Ruggles, 8 Johns. 210; Matter of Burke, 59 Cal. 6, 43 Am. Rep. 231; McPherson v. Village of Chebanse, 114 Ill. 46, 55 Am. Rep. 857; Com. v. Has, 122 Mass. 40; Com. v. Louisville, etc. R. Co., 3 Crim. L. Mag. 632; Vidal v. Girard's, Exrs., 2 How. (U. S.) 127.

§ 2141. Sabbath breaking.

A violation of the foregoing prohibition is Sabbath breaking.

Derivation: Penal Code, § 260.

Steinert v. Sobey (1897), 14 App. Div. 505, 44 N. Y. Supp. 146; Dunham v. Binghampton & L. B. B. Assn. (1904), 44 Misc. 114, 89, N. Y. Supp. 762; Brighton Athletic Club v. McAdoo (1905), 47 Misc. 432, 434, 94 N. Y. Supp. 391; see also anonymous, 12 Abb. N. C. 457.

§ 2142. Punishment for Sabbath breaking.

Sabbath breaking is a misdemeanor, punishable by a fine not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both, but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less than ten dollars and not more than twenty dollars, and by imprisonment in a county jail not less than five nor more than twenty days.

Derivation: Penal Code, § 269, as amended L. 1887, ch. 535.

Erbe v. Monteverde (1894), 13 Misc. 404, 35 N. Y. Supp. 102; Steinert v. Sobey (1897), 14 App. Div. 509, 44 N. Y. Supp. 146; People ex rel. Moffatt v. Zimmerman (1905), 48 Misc. 203, 204, 95 N. Y. Supp. 136; Matter of City of New York (1907), 57 Misc. 56, 108 N. Y. Supp. 197; People v. Schermerhorn (1908), 59 Misc. 149, 112 N. Y. Supp. 222.

§ 2143. Labor prohibited on Sunday.

All labor on Sunday is prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

Derivation: Penal Code, § 263, as amended L. 1883, ch. 358.

Merrit v. Earle (1864), 29 N. Y. 122, aff'g 31 Barb. 38; Eberle v. Mehrbach (1874), 55 N. Y. 682; Solarz v. Manhattan Ry. Co. (1894), 8 Misc. 656, 29 N. Y. Supp. 1123, 31 Abb. N. C. 426; People v. Havnor (1896), 149 N. Y. 195, aff'g 1 App. Div. 459, 37 N. Y. Supp. 314; Tyrrell v. Mayor, etc. (1898), 34 App. Div. 334, 54 N. Y. Supp. 372; People v. Poole (1904), 44 Misc. 119, 89 N. Y. Supp. 773; Hallen v. Thompson (1905), 48 Misc. 643, 96 N. Y. Supp. 142; People ex rel. Moffatt v. Zimmerman (1905), 48 Misc. 203, 204, 95 N. Y. Supp. 136; Matter of the City of New York (1907), 57 Misc. 56, 108 N. Y. Supp. 197; People ex rel. Hammerstein v. O'Gorman (1908), 124 App. Div. 222, 108 N. Y. Supp, 737; United Vaudeville Co. v. Zeller (1908), 58 Misc. 17, 108 N. Y. Supp. 789; Moore v. Owen (1908), 58 Misc. 335, 109 N. Y. Supp. 585; see also Batsford v. Every, 44 Barb. 618; Bilordeaux v Lithographic Co., 16 Daly, 78, 9 N. Y. Supp. 507; Dinsmore v. Board of Police,

12 Abb. N. C. 437; Miller v. Roessler, 4 E. D. Smith, 234; Sun, etc., Assn. v. Tribune, etc., Assn., 44 N. Y. Super. 136; Isaacs v .Beth, etc., Society, 1 Hilt. 469; Rex v. Brotherton, 2 Str. 702; State v. Railroad Co., 24 W. Va. 783, 49 Am. Rep. 290.

§ 2144. Persons observing another day as a Sabbath.

It is a sufficient defense to a prosecution for work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Derivation: Penal Code, § 264, as amended L. 1885, ch. 519.

People ex rel. Moffatt v. Zimmerman (1905), 48 Misc. 203, 204, 95 N. Y. Supp. 136; see also Paulding v. Lane, 104 N. Y. Supp. 1051; Scales v. State, 47 Ark. 476, 58 Am. Rep. 768; Johns v. State, 78 Ind. 332, 41 Am. Rep. 577; City of Schreveport v. Levy, 26 La. Ann. 671, 21 Am. Rep. 553; Com. v. Has, 122 Mass. 40; Swann v. Swann, 21 Fed. 299; Maxson v. Annas, 1 Den. 204.

§ 2145. Public sports on Sunday.

All shooting, hunting, fishing, playing, horse racing, gaming or other public sports, exercises or shows, upon the first day of the week, and all noise disturbing the peace of the day are prohibited.

Derivation: Penal Code, § 265, as amended L. 1883, ch. 358.

People v. Dennin (1885), 35 Hun, 327, 3 N. Y. Cr. 127; People v. Moses (1893), 140 N. Y. 211, aff'g 65 Hun, 161, 20 N. Y. Supp. 9; Quinlan v. Conlin (1895), 13 Misc. 568, 34 N. Y. Supp. 952; Kenny v. Martin (1895), 11 Misc. 651, 32 N. Y. Supp. 1087; Matter of Rupp (1898), 33 App. Div. 468, 53 N. Y. Supp. 927; People ex rel. Bedell v. DeMott (1902), 38 Misc. 171, 172, 77 N. Y. Supp. 249, 16 Crim. Rep. 552; People v. Poole (1904), 44 Misc. 118, 89 N. Y. Supp. 773; People ex rel. Poole v. Hesterberg (1904), 43 Misc. 510, 89 N. Y. Supp. 498; Dunham v. Binghampton & L. B. B. Assn. (1904), 44 Misc. 114, 89 N. Y. Supp. 762; Brighton Athletic Club v. McAdoo (1905), 47 Misc. 432, 434, 94 N. Y. Supp. 391; Ontario Field Club v. McAdoo (1905), 56 Misc. 285, 107 N. Y. Supp. 295; Hallen v. Thompson (1905), 48 Misc. 643, 96 N. Y. Supp. 142; People ex rel. Hart v. Demerest (1906), 56 Misc. 288, 107 N. Y. Supp. 549; People v. Finn (1908), 57 Misc. 661, 110 N. Y. Supp. 22, 108 N. Y. Supp. 207; United Vaudeville Co. v. Zeller (1908), 58 Misc. 17, 108 N. Y. Supp. 789; Moore v. Owen (1908), 58 Misc. 335, 109 N. Y. Supp. 585; Eden Musee Co. v. Bingham (1908), 125 App. Div. 782, 110 N. Y. Supp. 210, 58 Misc. 645, 108 N. Y. Supp. 200; People v. Hemlet (1908) 127 App. Div. 357; see also Scongale v. Sweet (Mich.), 82 N. W. 1061; State v. O'Rourke, 35 Nebr. 614, 17 L. R. A. 860, 46 Alb. L. J. 531.

§ 2146. Trades, manufactures, and mechanical employments prohibited on Sunday.

All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

Derivation: Penal Code, § 266, as amended L. 1883, ch. 358.

People v. Lyons (1875), 5 Hun, 643; People ex rel. Hobach v. Sheriff (1895), 13 Misc. 587, 35 N. Y. Supp. 19; Quinlan v. Conlin (1895), 13 Misc. 568, 34 N. Y. Supp. 952; People v. Havnor (1896), 149 N. Y. 195; Book 30 (reprint ed.) 794, note aff'g App. Div. 459, 37 N. Y. Supp. 314; People v. Butts (1907), 121 App Div. 226, 105 N. Y. Supp. 677; see also Landers v. Staten Island R. Co., 13 Abb. Pr. (N. S.) 355; Manhattan Iron Works Co. v. French, 12 Abb. N. C. 448; Ex parte Jentzsch, 112 Cal. 468, 32 L. R. A. 664; Eden v. People, 161 Ill. 296, 32 L. R. A. 659; Mueller v. State, 76 Ind. 310, 40 Am. Rep. 245; Yonoski v. State, 79 Ind. 393, 41 Am. Rep. 614; Wilkinson v. State, 59 Ind. 416, 26 Am. Rep. 84; Com. v. Louisville, etc. R. Co., 80 Ky. 291, 44 Am. Rep. 475; Philadelphia, etc. R. Co. v. Lehman, 56 Md. 209, 40 Am. Rep. 415; Com. v. Dextra, 143 Mass. 28; Hennersdorf v. State, 11 Crim. L. Mag. 179; Phelps v. Board of Police, 23 Daily Reg. No. 1, 5 Law Bull. 13; Petit v. Minnesota, 177 U. S. 164.

§ 2147. Public traffic on Sunday.

All manner of public selling or offering for sale of any property upon Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco, milk, ice and soda-water in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, flowers, confectionery, newspapers, drugs, medicines and surgical appliances may be sold in a quiet and orderly manner at any time of the day. The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods, or meats, fresh or salt, at any hour or time of the day.

Derivation: Penal Code, § 267, as amended L. 1883, ch. 358; L. 1896, ch. 648; L. 1901, ch. 392.

O'Shea v. Kohn (1884), 33 Hun, 115, aff'd 97 N. Y. 649; Quinlan v. Conlin (1895), 13 Misc. 568, 34 N. Y. Supp. 952; People ex rel. Woodin v. Hagan (1901), 36 Misc. 349, 73 N. Y. Supp. 564; People ex rel. Moffatt v. Zimmer-

man (1905), 48 Misc. 203, 204, 95 N. Y. Supp. 136; see also Batsford v. Every, 44 Barb. 618; State v. Ohmer, 11 Crim. L. Mag. 378, citing 12 Abb. N. C. 458.

§ 2148. Serving process on Sunday.

All service of legal process, of any kind whatever, on the first day of the week is prohibited, except in cases of breach of the peace or apprehended breach of the peace or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute. Service of any process upon said day except as herein permitted is absolutely void for any and every purpose whatsoever.

Derivation: Penal Code, § 268, as amended L. 1892, ch. 622.

Hastings v. Farmer (1850), 4 N. Y. 296; Scott Shoe Co. v. Dancel (1901), 63 App Div. 172, 71 N. Y. Supp. 263; see also Van Vechten v. Paddock, 12 Johns. 178; Butler v. Kelsey, 15 Johns. 177.

§ 2149. Forfeiture of commodities exposed for sale on Sunday.

In addition to the penalty imposed by section twenty-one hundred and forty-two, all property and commodities exposed for sale on the first day of the week in violation of the provisions of this article shall be forfeited. Upon conviction of the offender by a justice of the peace of a county, or by any police justice or magistrate, such officer shall issue a warrant for the seizure of the forfeited articles, which, when seized, shall be sold on one day's notice, and the proceeds paid to the overseers of the poor, for the use of the poor of the town or city.

Derivation: Penal Code, § 270, as amended L. 1883, ch. 358.

People ex rel. Moffatt v. Zimmerman (1905), 48 Misc. 203, 204, 95 N. Y. Supp. 136.

§ 2150. Maliciously serving process on Saturday on person who keeps Saturday as holy time.

Whoever maliciously procures any process in a civil action to be served on Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

Derivation: Penal Code, § 271.

Martin v. Goldstein (1897), 20 App. Div. 203, 46 N. Y. Supp. 961; see also Maxson v. Annas, 1 Den. 204.

§ 2151. Processions and parades on Sunday.

All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fireworks, discharge of cannon or firearms, or other disturbing noise. At a military funeral, or at the funeral of a United States soldier, sailor or marine, or of a national guardsman, or of a deceased member of an association of veteran soldiers, sailors or marines, or of a disbanded militia regiment, or of a secret fraternal society, music may be played while escorting the body; also in patriotic military processions on Sunday previous to Decoration day, known as memorial Sunday, to cemeteries or other places where memorial services are held; but in no case within one block of a place of worship where service is then being celebrated. A person wilfully violating any provision of this section is punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days, or by both. (Am'd by L. 1911, ch. 147, in effect May 17, 1911.)

Derivation: Penal Code, § 276, as amended L. 1883, ch. 302, 358; L. 1895, ch. 778.

People v. Miles (1908), 123 App. Div. 871, 108 N. Y. Supp. 510.

§ 2152. Theatrical and other performances on Sunday.

The performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, negro or other dancing, wrestling, boxing with or without gloves, sparring contest, trial of strength, or any part or parts therein, or any circus, esquestrian or dramatic performance or exercise, or any perfomance or exercise of jugglers, acrobats, club performances or rope dancers on the first day of the week is forbidden; and every person aiding in such exhibition, performance or exercise by advertisement, posting or otherwise, and every owner or lessee of any garden, building or other room, place or structure, who leases or lets the same for the purpose of any such exhibition, performance or exercise, or who assents to the use of the same, for any such purpose, if it be so used, is guilty of a misdemeanor.

In addition to the punishment therefor provided by statute, every person violating this section is subject to a penalty of five hundred dollars, which penalty "The Society for the Reformation of Juvenile Delinquents" in the city of New York, for the use of that society, and the overseers of the poor in any other city or town, for the use of the poor, are authorized, in the name of the *people* of this state, to recover.

Besides this penalty, every such exhibition, performance or exercise, of itself, annuls any license which may have been previously obtained by the manager, superintendent, agent, owner or lessee, using or letting such building, garden, room, place or other structure, or consenting to such exhibition, performance or exercise.

Derivation: Penal Code, § 277, as amended L. 1883, ch. 358.

Neuendorff v. Duryea (1877), 69 N. Y. 557, 25 Am. Rep. 235, aff'g 6 Daly, 276; Matter of Allen (1901), 34 Misc. 698, 70 N. Y. Supp. 1017, 15 N. Y. Cr. 453; Hallen v. Thompson (1905), 48 Misc. 643, 96 N. Y. Supp. 142; Matter of the City of N. Y. (1907), 57 Misc. 52, 108 N. Y. Supp. 197; People ex rel. Hammerstein v. O'Gorman (1908), 124 App. Div. 225, 104 N. Y. Supp. 737; People v. Helmet (1908) 127 App. Div. 358; United Vaudeville Co. v. Zeller (1908) 58 Misc. 18, 108 N. Y. Supp. 789, 108 N. Y. Supp. 207; Eden Musee Co. v. Bingham (1908), 58 Misc. 648, 108 N. Y. Supp. 200; Moore v. Owen (1908), 58 Misc. 333, 109 N. Y. Supp. 585; see also People v. Hoym, 20 How. Pr. 76.

§ 2153. Barbering on Sunday.

Any person who carries on or engages in the business of shaving, hair cutting or other work of a barber on the first day of the week, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five dollars; and upon a second conviction for a like offense shall be fined not less than ten dollars and not more than twenty-five dollars, or be imprisoned in the county jail for a period of not less than ten days, nor more than twenty-five days, or be punishable by both such fine and such imprisonment at the discretion of the court or magistrate; provided, that in the village of Saratoga Springs, from the fifteenth day of June to the fifteenth day of September, inclusive, and in the city of New York throughout the year, barber shops or other places where a barber is engaged in shaving, hair cutting or other work of a barber, may be kept open, and the work of a barber may be performed therein until one o'clock of the afternoon of the first day of the week.

Derivation: L. 1895, ch. 823, as amended L. 1907, ch. 297.

ARTICLE 194.

SALT WORKS.

SECTION 2170. Injuries to the Onondaga salt works.

§ 2170. Injuries to the Onondaga salt works.

A person who wilfully burns, destroys, or injures any salt manufactory connected with the Onondaga salt springs, or any building appurtenant to such manufactory or any part of such manufactory, or any of the buildings, reservoirs, pumps, conductors or water conduits, belonging to this state, used in the raising of salt water for the manufacture of salt, without authority of law, is punishable by imprisonment in a state prison not exceeding five years.

Derivation: Penal Code, § 483.

ARTICLE 195.

(Added by L. 1909, Ch. 524. In effect May 27, 1909.)

SEDUCTION.

SECTION 2175. Seduction under promise of marriage.
2176. Bar to prosecution.
2177. No conviction on unsupported testimony.

§ 2175. Seduction under promise to marry.

A person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment for not more than five years, or by the fine of not more than one thousand dollars or both.

Derivation: Penal Code, § 284. Added by L. 1909, Ch. 524. In effect, May 27, 1909.

Kenyon v. People (1863), 26 N. Y. 203, 84 Am. Dec. 177; Boyce v. People (1874), 55 N. Y. 644; Kaufman v. People (1877), 11 Hun, 82; People v. Hustis (1884), 32 Hun, 58, 2 N. Y. Cr. 448; People v. Eckert (1884), 2 N. Y. Cr. 470; People v. Johnson (1887), 104 N. Y. 213, 5 N. Y. Cr. 218, aff'g 4 N. Y. Cr. Rep. 591; People v. Wood (1892), 131 N. Y. 618, People v. Gumaer (1894), 80 Hun, 78, 30 N. Y. Supp. 17; People v. Duryea (1894), 81 Hun, 390, 30 N. Y. Supp. 877; People v. Van Alstyne (1894), 144 N. Y. 366, rev'g 78 Hun, 509, 29 N. Y. Supp. 542; People v. Gumaer (1896), 4 App. Div. 412, 39 N. Y. Supp. 326; People v. Nelson (1897), 153 N. Y. 90, 12 N. Y. Cr. 368, 60 Am. St. Rep. 592, rev'g 91 Hun, 635, 36 N. Y. Supp. 1130; see also People v. Ryan (1901), 63 App. Div. 429, 71 N. Y. Supp. 527; Disler v. McCauley (1901), 66 App. Div. 42, 44, 73 N. Y. Supp. 270; see also People v. Alger, 1 Park. 333; Conkey v. People, 5 Park. 431; Carpenter v. People, 8 Barb. 603; Crozier v. People, 1 Park. 453; Cook v. People, 2. Th. & C. 407; People v. Kane, 14 Abb. 16; People v. McArdle, 5 Park. 180; Reynolds v. People, 41 How. Pr. 179; Safford v. People, 1 Park. 474; Polk v. State, 40 Ark. 482, 48 Am. Rep. 17; People v. Roderigas, 49 Cal. 9; People v. Hough, 120 Cal. 538, 65 Am. St. Rep. 201; Wood v. State, 48 Ga. 192; Callahan v. State, 63 Ind. 198; 30 Am. Rep. 211; State v. Prizer, 49 Iowa, 531, 31 Am. Rep. 155; State v. Hughes, 106 Iowa, 129; State v. Higdom, 32 Iowa, 262; People v. Gould, 70 Mich. 240, 14 Am. St. Rep. 493; People v. Squires, 49 Mich. 487; People v. De Fore, 64 Mich. 693, 8 Am. St. Rep. 868; Patterson v. Hayden, 17 Oreg. 238, 11 Am. St. Rep. 822; State v. Adams, 25 Oreg. 172, 22 L. R. A. 840; Zabriskie v. State, 43 N. J. L. 640, 39 Am. Rep. 610; Oliver v. Com., 101 Pa. St. 215, 47 Am. Rep. 704; Croghan v. State, 22 Wis. 444.

§ **2176. Bar to prosecution.**

The subsequent intermarriage of the parties, or the lapse of two years after the commission of the offense before the finding of an indictment, is a bar to a prosecution for a violation of this section.

Derivation: Penal Code, § 285. Added by L. 1909, Ch. 524. In effect, May 27, 1909.

§ **2177. No conviction on unsupported testimony.**

No conviction can be had for an offense specified in the last section, upon the testimony of the female seduced, unsupported by other evidence.

Derivation: Penal Code, § 286. Added by L. 1909, Ch. 524. In effect, May 27, 1909.

Kenyon v. People (1863), 26 N. Y. 203; Boyce v. People (1874), 55 N. Y. 644; Armstrong v. People (1877), 70 N. Y. 38; People v. Kearney (1888), 110 N. Y. 188, 7 N. Y. Cr. 114, rev'g 47 Hun, 129, 7 N. Y. Cr. 106; People v. Girmaer (1894), 80 Hun, 78, 30 N. Y. Supp. 17; People v. Orr (1895), 92 Hun, 199, 36 N. Y. Supp. 398; see also Crandall v. People, 2 Lans. 309; People v. Hine, 8 N. Y. Leg. Obs. 139; State v. Araah, 55 Iowa, 250; State v. Dietrick, 51 Iowa, 467; People v. Jensen (Mich.), 33 N. W. 811; State v. Brassfield, 81 Mo. 151, 51 Am. Rep. 234; State v. Patterson, 88 Mo. 88, 57 Am. Rep. 374; Rice v. Com., 100 Pa. St. 28; Cook v. People, 2 Th. & C. 404; State v. Hill, 4 S. W. 121; State v. Brinkhaus, 7 Crim. L. Mag. 343.

ARTICLE 196.

SENTENCE.

SECTION 2180. Place to be specified in sentence; removal of convicts.
2181. Sentence to imprisonment for less than one year.
2182. Sentence to imprisonment for one year.
2183. Sentence to imprisonment for more than one year.
2184. Sentence to house of refuge, state industrial school, and New York state training school for girls.
2185. Sentence of males between sixteen and thirty years of age.
2186. Sentence of minors to imprisonment.
2187. Sentence of female convicts to imprisonment.
2188. Duty of court to sentence; suspending sentence.
2189. Indeterminate sentences to state prisons.
2190. Sentence to imprisonment on two or more convictions.
2191. Sentence when punishment prescribed is imprisonment for not less than a specified time.
2192. Sentence where punishment prescribed is imprisonment for not more than a specified time.
2193. Calculating term of imprisonment.
2194. Sentence of minor under sixteen years of age.
2195. Imprisonment when sentenced to a reformatory.
2196. Sentence to penitentiary under the provisions of § 320 of prison law, of person not punishable by imprisonment in state prison.
2197. Repealed.
2198. Sentence of convicts to state prisons.

§ 2180. Place to be specified in sentence; removal of convicts.

The place of the imprisonment must be specified in the judgment and sentence of the court. But convicts may be removed from one place of confinement to another, in a case, and by the authority, designated by statute.

Derivation: Penal Code, § 705.

Weed v. People (1865), 31 N. Y. 465; see also Matter of Waterman, 33 Fed. 29.

§ 2181. Sentence to imprisonment for less than one year.

Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term less than one year, the imprisonment must be inflicted by confinement in the county jail, or place of confinement designated by law to be used as the jail of the county, except when otherwise specially prescribed by statute.

Derivation: Penal Code, § 702.

People v. Parr (1886), 4 N. Y. Cr. 546; People v. Hughes (1893), 137 N. Y. 33, aff'g 46 N. Y. S. R. 413.

§ 2182. Sentence to imprisonment for one year.

Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term of one year, he may be sentenced to, and the imprisonment may be inflicted by, confinement either in a county jail, or in a penitentiary or state prison. No person shall be sentenced to imprisonment in a state prison for less than one year.

Derivation: Penal Code, § 703.

People ex rel. DeVoe v. Kelly (1884), 97 N. Y. 212, 32 Hun, 540, modf'g 32 Hun, 536; People v. Parr (1886), 4 N. Y. Cr. 546; Mairs v. Balt. & Ohio Railroad Co. (1903), 175 N. Y. 409, aff'g 73 App. Div. 265, 76 N. Y. Supp. 838.

§ 2183. Sentence to imprisonment for more than one year.

Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term exceeding one year, or is sentenced to imprisonment for such a term, the imprisonment must be inflicted by confinement at hard labor in a state prison. But this and sections twenty-one hundred and eighty-one and twenty-one hundred and eighty-two shall not apply to a case where special provision is made by statute as to the punishment for any particular offense or class of offenses or offenders, nor to the cases specified in sections twenty-one hundred and eighty-four, twenty-one hundred and eighty-five, twenty-one hundred and eighty-six and twenty-one hundred and eighty-seven.

Derivation: Penal Code, § 704.

People v. Hughes (1893), 137 N. Y. 29, aff'g 46 N. Y. S. R. 413; People ex rel. Gately v. Sage (1897), 13 App. Div. 136, 43 N. Y. Supp. 372, rev'g 17 Misc. 713, 41 N. Y. Supp. 531; People ex rel. Cosgriff v. Craig (1908), 60 Misc. 531; see also People v. Dewey, 11 N. Y. Supp. 603.

§ 2184. Sentence to house of refuge, state industrial school, and New York state training school for girls.

Where a male person under the age of twelve years is convicted of a crime amounting to felony, or where a male person of twelve years and under the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge under the provsions of the statute relating thereto. Where the conviction is had and the sentence

is inflicted in the first, second, third or ninth judicial district, the place of confinement must be a house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York; where the conviction is had and the sentence inflicted in any other district, the place of confinement must be in the state industrial school. Where a female person not over the age of twelve years is convicted of a crime amounting to felony, or where a female person of the age of twelve years and not over the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing her to imprisonment in a state prison or in a penitentiary, direct her to be confined in the New York state training school for girls, under the provisions of the statute relating thereto. But nothing in this section shall affect any of the provisions contained in section twenty-one hundred and ninety-four.

Derivation: Penal Code, § 701, as amended L. 1896, ch. 554; L. 1904, ch. 388.

People ex rel. Zeese v. Masten (1894), 79 Hun, 580, 29 N. Y. Supp. 891; see also People v. Degnen, 6 Abb. Pr. (N. S.) 87, 54 Barb. 105; Matter of Lewinski, 66 How. Pr. 175; Park v. People, 1 Lans. 263; Matter of Reilly, 18 Week. Dig. 515.

§ 2185. Sentence of males between sixteen and thirty years of age.

A male between the ages of sixteen and thirty, convicted of a felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may, in the discretion of the trial court, be sentenced to imprisonment in the New York state reformatory at Elmira, to be there confined under the provisions of law relating to that reformatory.

Derivation: Penal Code, § 700, as amended L. 1888, ch. 145.

People ex rel. Duntz v. Coon (1893) 67 Hun, 523, 22 N. Y. Supp. 865; People v. Madden (1907), 120 App Div. 338; People ex rel. Bettram v. Flynn (1907), 55 Misc. 22, 105 N. Y. Supp. 551; Matter of Jacobs (1908), 57 Misc. 655, 109 N. Y. Supp. 1068; see also Matter of Gilmore, N. Y. L. J. August 26, 1893; Matter of Weber, Daily Reg. Aug. 17, 1888.

§ 2186. (Am'd, 1909.) Sentence of minors to imprisonment.

Where a male person between the ages of sixteen and twenty-one years is convicted of a felony, or where the term of imprisonment of a male convict for a felony is fixed by the trial court at

one year or less, the court may direct the convict to be imprisoned in a county penitentiary, instead of a state prison, or in the county jail located in the county where sentence is imposed. A child of more than seven and less than sixteen years of age, who shall commit any act or omission which, if committed by an adult, would be a crime not punishable by death or life imprisonment, shall not be deemed guilty of any crime, but of juvenile deliquency only, but any other person concerned therein, whether as principal or accessory, who otherwise would be punishable as a principal or accessory shall be punishable as a principal or accessory in the same manner as if such child were over sixteen years of age at the time the crime was committed. Any child charged with any act or omission which may render him guilty of juvenile deliquency shall be dealt with in the same manner as now is or may hereafter be provided in the case of adults charged with the same act or omission except as specially provided heretofore in the case of children under the age of sixteen years.

Derivation: Penal Code, § 699, as amended L. 1892, ch. 496; L. 1894, ch. 726; L. 1896, ch. 553; L. 1902, ch. 103; L. 1905, ch. 655; L. 1907, ch. 417. Amended by L. 1909, Ch. 478. In effect Sept. 1, 1909.

§ 2187. Sentence of female convicts to imprisonment.

Any woman over the age of sixteen years, who shall be convicted of a felony in any of the courts of this state, shall, when the sentence imposed is one year or more, be sentenced to imprisonment in the state prison for women at Auburn. When the sentence imposed is less than one year, she may be committed to the county jail of the county where convicted, or to a penitentiary, or to the state prison for women at Auburn. A woman between the ages of fifteen and thirty, convicted of a felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may in the discretion of the trial court be sentenced to a house of refuse or reformatory for women, to be there confined under the provisions of law relating to such house of refuge or reformatory.

Derivation: Penal Code, § 698, as amended L. 1896, ch. 374; L. 1900, ch. 114.

People ex rel. Olcott v. House of Refuge (1897), 22 App. Div. 254, 47 N. Y. Supp. 767.

§ 2188. Duty of court to sentence; suspending sentence.

The several sections of this chapter which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass sentence to determine and impose the punishment prescribed, but such court may in its discretion suspend sentence, during the good behavior of the person convicted, where the maximum term of imprisonment prescribed by law does not exceed ten years and such person has never been convicted of a felony. Courts of special sessions are empowered to suspend sentence and at any time within the longest period for which a defendant might have been sentenced, may issue process for the re-arrest of the defendant, and when arraigned the court as it is then constituted may proceed to enter judgment and impose sentence.

In the case of children under sixteen years of age, at the time of conviction, the longest period of time after suspension of sentence within which a sentence may be imposed for such offense shall be one year; and in any proceeding of a criminal nature, triable before a magistrate, the magistrate upon conviction, may suspend sentence and place the offender under probation and at any time thereafter, during the longest period for which he could have been committed in the first instance, such magistrate, or his successor, if his term has expired, may pronounce any judgment or sentence or impose any fine or other penalty, or make any commitment which might have been pronounced, imposed or made at the time the conviction was had.

Derivation: Penal Code, § 12, as amended L. 1893, ch. 279; L. 1905, ch. 655.

People v. Harrington (1884), 15 Abb. N. C. 161, 3 N. Y. Cr. 141, 1 How. Pr. (N. S.) 37; People ex rel. Forsyth v. Court of Sessions (1894), 141 N. Y. 293, 23 L. R. A. 856, rev'g 66 Hun, 550; People ex rel. Dunnigan v. Webster (1895), 86 Hun, 73, 14 Misc. 617, 36 N. Y. Supp. 745, 11 N. Y. Cr. 484; see also Miller's case, 5 Cow. 370; People v. Morrisette, 20 How. Pr. 118; Brown v. Rice, 57 Me. 55, 2 Am. Rep. 11; People v. Meservey, 76 Mich. 223; In re Webb, 89 Wis. 354, 27 L. R. A. 356; People v. Archer, 18 Chi. Leg. News. 245; People v. Mueller, 4 Crim. L. Mag. 725.

§ 2189. (Am'd, 1909.) Indeterminate sentences to State prisons.

A person never before convicted of a crime punishable by imprisonment in a state prison, who is convicted in any court in this state of a felony other than murder first or second degree,

and sentenced to a state prison, shall be sentenced thereto under an indeterminate sentence, the minimum of which shall not be less than one year, or in case a minimum is fixed by law, not less than such minimum; otherwise, the miniumum of such sentence shall not be more than one-half the longest period and the maximum shall not be more than the longest period fixed by law for which the crime is punishable of which the offender is convicted. The maximum limit of such sentence shall be so fixed as to expire during either of the following months; April, May, June, July, August, September and October.

Derivation: Penal Code, § 687a, added L. 1901, ch. 425, and amended L. 1902, ch. 282; L. 1906, ch. 36; L. 1907, ch. 737. Amended by L. 1909, ch. 282. In effect May 8, 1909.

People v. Hochstim (1902), 76 App. Div. 25, 26, 78 N. Y. Supp. 638, 986; People ex rel. Clark v. Warden of Sing Sing Prison (1902), 39 Misc. 113, 78 N. Y. Supp. 907, 119 Crim. Rep. 420; People v. Adams (1903), 176 N. Y. 362, 19 N. Y. Cr. 425, 17 N. Y. Cr. 558, aff'd Sub. Nom. Adams v. New York, 192 U. S. 585; People ex rel. Adams v. Johnson (1904), 44 Misc, 551, 90 N. Y. Supp. 134, 19 N. Y. Cr. 435; People ex rel. Schall v. Deyo (1905), 181 N. Y. 425, 429, 19 N. Y. Cr. 442, rev'g 103 App. Div. 126, 127, 128, 93 N. Y. Supp. 80; People ex rel. Ammon v. Johnson (1906), 114 App. Div. 877, 878, 100 N. Y. Supp. 256, 20 N. Y. Cr. 377; People v. Madden (1907), 120 App. Div. 343; People ex rel. Dawkins v. Frost (1908), 129 App. Div. 499; see also Murphy v. Com., 172 Mass. 264, 43 L. R. A. 154; Dryer v. State, 187 U. S. 71.

§ 2190. Sentence to imprisonment on two or more convictions.

Where a person is convicted of two or more offenses, before sentence has been pronounced upon him for either offense, the imprisonment, to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first or other prior term or terms of imprisonment, to which he is sentenced.

Where a person, under sentence for a felony, afterward commits any other felony, and is thereof convicted and sentenced to another term of imprisonment, the latter term shall not begin until the expiration of all the terms of imprisonment, to which he is already sentenced.

Derivation: Penal Code, §§ 694, 695.

People ex rel. Tweed v. Liscomb (1875), 60 N. Y. 560, 19 Am. Rep. 211, rev'g 3 Hun, 760, 6 Th. & C. 658; Thomas v. People (1876), 67 N. Y. 218; People ex rel. Dawkins v. Frost (1908), 58 Misc. 621, 109 N. Y. Supp. 1121; *People* v. Fabian (1908), 126 App. Div. 95; see also Haggerty v.

People, 6. Lans. 347, 53 N. Y. 642; Eldridge v. State, 37 Ohio, St. 191; Castro v. Queen, 6 App. Cas. 229, 34 Eng. Rep. 399.

§ 2191. Sentence when punishment prescribed is imprisonment for not less than a specified time.

When a crime is declared by statute to be punishable by imprisonment for not less than a specified number of years, and no limit of the duration of the imprisonment is declared, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment during his natural life, or for any number of years not less than the amount prescribed.

Derivation: Penal Code, § 696, in part, as amended L. 1892, ch. 662, For remainder of section, see § 2192, *post*.

§ 2192. Sentence where punishment prescribed is imprisonment for not more than a specified time.

When a crime is declared by any of the provisions of this chapter to be punishable by imprisonment for not more than a specified number of years, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment for any time less than that prescribed by the provisions of this chapter.

Derivation: Penal Code, § 696, in part, as amended L. 1892, ch. 662. For remainder of section, see § 2191, *ante*.

§ 2193. Calculating term of imprisonment.

When a convict is to be sentenced to imprisonment in a state prison or a penitentiary, the court before which the conviction was had must limit the term of the sentence, having reference to the probability of the convict earning a reduction of his term for good behavior, as provided by article nine of the prison law, and assuming that such reduction will be earned, so that the sentence will expire during either of the following months: April, May, June, July, August, September and October.

But the provisions of this section shall not apply in the following cases:

1. Where the sentence is to be for the term of one year or less.
2. Where the term of imprisonment for the crime of which the convict was convicted absolutely fixes a single definite period of time.
3. Where a judgment of conviction has been affirmed upon

an appeal, and it becomes necessary for the court to impose the same sentence as that originally imposed.

The officers of every prison or penitentiary are hereby expressly prohibited from taking into their custody any convict sentenced in violation of the provisions of this section, and any convict so illegally sentenced shall be returned by the sheriff of the county where the conviction was had to the court to be re-sentenced in conformity to the provisions of this section. Provided that if it shall appear to the officers of any prison or penitentiary at the time it is sought to incarcerate a convict therein that the court which imposed the sentence has adjourned, then it shall be lawful for said officers to receive said convict and hold him in their custody until he can be re-sentenced as herein provided, and the second or re-sentence shall be deemed to have begun on the date of the convict's reception under his first sentence. The officers of any prison or penitentiary shall, in the case of a convict so illegally sentenced to imprisonment therein, immediately notify the court of their action.

Derivation: Penal Code, § 697, as amended L. 1886, ch. 68; L. 1888, ch. 492.

People v. Trimble (1891), 60 Hun, 364, 15 N. Y. Supp. 60; People ex rel. Adams v. Johnson (1904), 44 Misc. 550, 90 N. Y. Supp. 134, 19 N. Y. Cr. 435; People ex rel. Schali v. Deyo (1905), 103 App. Div. 126, 127, 128, 93 N. Y. Supp. 80; People ex rel. Ammon v. Johnson (1906), 114 App. Div. 879, 100 N. Y. Supp. 256, 20 N. Y. Cr. 377; see also People v. Davis, 19 N. Y. Supp. 783.

§ 2194. Sentence of minor under sixteen years of age.

When a person under the age of sixteen is convicted of a crime, he may, in the discretion of the court, instead of being sentenced to fine or imprisonment, be placed in charge of any suitable person or institution willing to receive him, and be thereafter, until majority or for a shorter term, subjected to such discipline and control of the person or institution receiving him as a parent or guardian may lawfully exercise over a minor. A child under sixteen years of age committed for misdemeanor, under any provision of this chapter, must be committed to some reformatory, charitable or other institution authorized by law to receive and take charge of minors. And when any such child is committed to an institution it shall, when practicable, be

committed to an institution governed by persons of the same religious faith as the parents of such child.

Derivation: Penal Code, § 713, as amended L. 1884, ch. 46.

People ex rel. Zeese v. Masten (1894), 79 Hun, 580, 29 N. Y. Supp. 891; People ex rel. Cronin v. Carpenter (1898), 25 Misc. 341, 55 N. Y. Supp. 521; People ex rel. Mt. Magdalen's School v. Dickson (1890), 123 N. Y. 639, aff'g 57 Hun, 312, 10 N. Y. Supp. 604; People ex rel. Sanfilippo v. New York Protectory (1902), 38 Misc. 660, 17 N. Y. Cr. 113, 78 N. Y. Supp. 232; Corbett v. St. Vincent's Industrial School (1903), 79 App. Div. 334, 341, 79 N. Y. Supp. 369.

§ 2195. Imprisonment when sentenced to a reformatory.

When a person shall be sentenced to imprisonment in a reformatory as prescribed in section three hundred and seven of the prison law, the court imposing such sentence shall not fix or limit the duration thereof.

Derivation: L. 1887, ch. 711, § 9, in part, rewritten.

§ 2196. Sentence to penitentiary under the provisions of section 320 of the prison law, of person not punishable by imprisonment in state prison.

It shall be the duty of every court, police justice, justice of the peace, or other magistrate, by whom any person may be sentenced, in the several counties of this state, for any term not less than sixty days, for any crime or misdemeanor not punishable by imprisonment in the state prison, during the continuance of the agreement mentioned in section three hundred and twenty of the prison law, to sentence such person to imprisonment in such penitentiary, there to be received, kept and employed in the manner prescribed by law, and the rules and discipline of such penitentiary; and it shall be the duty of such court, justice or magistrate, by a warrant, duly signed by the presiding judge, or justice or clerk of such court, or by such justice or other magistrate so giving such sentence, to cause such person so sentenced, to be forthwith and by the most direct route conveyed by some proper officer to such penitentiary. It shall be the duty of the sheriffs, deputy sheriffs, constables or policemen in and for the several counties of this state, to whom any warrant of commitment for that purpose may be directed by any court or magistrate in this section mentioned, to convey forthwith such person so sentenced, to such penitentiary, and there deliver such person to the

keeper of such penitentiary, whose duty it shall be to receive such persons, so sentenced, during the continuance of said agreement, authorized by said section three hundred and twenty of the prison law, to be there safely kept and employed, according to the rules and discipline of such penitentiary; and the officers thus conveying such convicts so sentenced, shall be paid such fees and expenses therefor, as the several boards of supervisors of the several counties of this state shall prescribe and allow.

Derivation: L. 1874, ch. 209, § 2, as amended L. 1876, ch. 108.

§ **2197.** (Repealed by L. 1909, ch. 467. In effect May 24, 1909.)

§ **2198 (Added, 1909.) Sentence of convicts to state prisons.** All male convicts sentenced to imprisonment in a state prison in the first, second and ninth judicial districts shall be sentenced to the Sing Sing prison, and all so sentenced in the third and fourth judicial districts, shall be sentenced to the Clinton prison, and all so sentenced in the fifth, sixth, seventh and eighth judicial districts shall be sentenced to Auburn prison.

Added by L. 1909, ch. 240. In effect April 22, 1909.

ARTICLE 198.

SEPULTURE.

SECTION 2210. Right to direct disposal of one's own body after death.
2211. Duty of burial of the dead.
2212. Burial in other states.
2213. Right to dissect dead body of a human being.
2214. Unlawful dissection of the body of a human being.
2215. After dissecting, remains must be buried.
2216. Body stealing.
2217. Receiving stolen body of a human being.
2218. Opening graves.
2219. Arresting or attaching a dead body of a human being.
2220. Disturbing funerals.

§ 2210. Right to direct disposal of one's own body after death.

A person has the right to direct the manner in which his body shall be disposed of after his death; and also to direct the manner in which any part of his body, which becomes separated therefrom during his lifetime, shall be disposed of; and the provsions of this article do not apply to any case where a person has given directions for the disposal of his body or any part thereof inconsistent with those provisions.

Derivation: Penal Code, § 305.

Wehle v. U. S. Mut. Accident Assoc. (1895), 11 Misc. 36, 31 N. Y. Supp. 865.

§ 2211. Duty of burial of the dead.

Except in the cases in which a right to dissect it is expressly conferred by law, every dead body of a human being, lying within this state, must be decently buried within a reasonable time after death.

Derivation: Penal Code, § 306.

Patterson v. Patterson (1874), 59 N. Y. 583, modf'g 1 Hun, 323, 47 How. Pr. 242; see also Matter of Beekman Street, 4 Bradf. 503; Copper's case, 58 How. Pr. 55; Rousseau v. City of Troy, 49 How. Pr. 492; Snyder v. Snyder, 60 How. Pr. 368; Windt v. German Reformed Church, Sandf. Ch. 471; Page v. Symonds, 63 N. H. 17, 56 Am. Rep. 481; Wendger v. Geary, 113 Ind. 113; Cunningham v. Reardon, 98 Mass. 538; Weld v.

Walker, 130 Mass. 422, 39 Am. Rep. 465; Meagher v. Driscoll, 99 Mass. 281; Wyncoop v. Wyncoop, 42 Pa. St. 293; Pierce v. Swan Point Cemetery, 10 R. I. 227, 14 Am. Rep. 667; Williams v. Williams, L. R., 20 Ch. Div. 659; Durell v. Hayward, 9 Gray 248; Lakin v. Ames, 10 Cush. 198, 221; Jenkins v. Tucker, 1 H. Bl. 90; Chappell v. Cooper, 3 M. & W. 259.

§ 2212. Burial in other states.

The last section does not impair any right to carry the dead body of a human being through this state, or to remove from this state the body of a person dying within it, for the purpose of burying the same elsewhere.

Derivation: Penal Code, § 307.

§ 2213. Right to dissect dead body of a human being.

The right to dissect the dead body of a human being exists in the following cases:

1. In the cases prescribed by special statutes; or,

2. Whenever a coroner is authorized by law to hold an inquest upon a body, so far as such coroner authorizes dissection for the purposes of the inquest, and no further; or,

3. Whenever and so far as the husband, wife or next of kin of the deceased, being charged by law with the duty of burial, may authorize dissection for the purpose of ascertaining the cause of death, and no further; or,

4. Whenever any district attorney in this state, in the discharge of his official duties, shall deem it necessary, he may exhume, take possession of, and remove the body of a deceased person, or any portion thereof, and submit the same to a proper physical or chemical examination, or analysis, to ascertain the cause of death, and the same shall be made on the order of any justice of the supreme court of this state, or the county judge of the county in which such dead body shall be, which order shall be made on the application of the district attorney with or without notice to the relatives of the deceased person or to any person or corporation having the legal charge of such body, as the court may direct. Said district-attorney shall have power to direct the sheriff, constable, or other peace officer in this state, or to employ such person, or persons as he may deem necessary to assist him in exhuming, removing, obtaining possession of and examining physically or chemically such dead body or any portion thereof. The expense therefor

shall be a county charge, to be paid by the county treasurer on the certificate of the district attorney.

Derivation: Penal Code, § 308, as amended L. 1889, ch. 500.

People v. Fitzgerald, 105 N. Y. 152, 5 N. Y. Cr. 42, rev'g 43 Hun, 35.

§ 2214. Unlawful dissection of the body of a human being.

A person who makes, or causes or procures to be made, any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

Derivation: Penal Code, § 309.

Jackson v. Savage (1905), 109 App. Div. 556, 558, 96 N. Y. Supp. 366.

§ 2215. After dissection, remains must be buried.

In all cases in which a dissection has been made, the provisions of this article, requiring the burial of a dead body, and punishing interference with or injuries to it, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

Derivation: Penal Code, § 310.

§ 2216. Body stealing.

A person, who removes the dead body of a human being, or any part thereof, from a grave, vault, or other place, where the same has been buried, or from a place where the same has been deposited while awaiting burial, without authority of law, with intent to sell the same, or for the purpose of dissection, or for the purpose of procuring a reward for the return of the same, or from malice or wantonness, is punishable by imprisonment for not more than five years or by a fine not exceeding one thousand dollars, or both.

Derivation: Penal Code, § 311.

Matter of Board, etc. (1892), 133 N. Y. 335, aff'g 62 Hun, 499, 16 N. Y. Supp. 894; see also People v. Fitzgerald (1887), 105 N. Y. 146, 5 N. Y. Cr. 335, 6 N. Y. St. 828, rev'g 43 Hun 35, 6 N. Y. St. 599, 59 Am. Rep. 483.

§ 2217. Receiving stolen body of a human being.

A person who purchases, or receives except for the purpose of burial, the dead body of a human being, or any part thereof, knowing that the same has been removed contrary to the last section, is punishable by imprisonment for not more than three years.

Derivation: Penal Code, § 312.

§ 2218. Opening graves.

A person who opens a grave or other place of interment, temporary or otherwise, or a building wherein the dead body of a human being is deposited while awaiting burial, without authority of law, with intent to remove the body, or any part thereof, for the purpose of selling it or demanding money for the same, or for the purpose of dissection, or from malice or wantonness, or with intent to steal or remove the coffin or any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the dead body, is punishable by imprisonment for not more than two years, or by a fine of not more than two hundred and fifty dollars, or by both.

Derivation: Penal Code, § 313.

Rhodes v. Brandt (1880), 21 Hun, 1; Bornman v. Star Co. (1903), 174 N. Y. 220; see also Coates v. New York City, 7 Cow. 585; Wynkoop v. Wynkoop, 42 Pa. St. 293; Craig v. Presbyterian Church, 88 Pa. St. 42, 32 Am. Rep. 417; Pierce v. Cemetery Co., 10 R. I. 227, 14 Am. Rep. 667; Reg. v. Sharpe, Dears & Bell, 7 Cox Cr. Cas. 214; Slattery v. Naylor, 13 App. Cas. 446, 39 Eng. Rep. 113.

§ 2219. Arresting or attaching a dead body of a human being.

A person who arrests or attaches the dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

Derivation: Penal Code, § 314.

Rowland v. Miller, 61 N. Y. Super. 167, 15 N. Y. Supp. 703.

§ 2220. Disturbing funerals.

A person who, without authority of law ,obstructs or detains any persons engaged in carrying or accompanying the dead body of a human being to a place of burial, is guilty of a misdemeanor.

Derivation: Penal Code, § 315.

People v. Diamond (1902), 72 App. Div. 281, 285, 76 N. Y. Supp. 57.

§ 2221. Burials on canal lands.

The burial or interment of a human body or human remains or any portion or portions thereof within the blue line of any existing canals of this state, or of the improved canals of this state, is hereby forbidden, and any person or persons violating this section is guilty of a misdemeanor. (Added by L. 1910, ch. 144, in effect Apr. 22, 1910.)

ARTICLE 200.

SOCIETIES AND ORDERS.

SECTION 2240. Unauthorized wearing or use of badge, name, title of officers, insignia, ritual or ceremony of certain orders and societies.

§ 2240. Unauthorized wearing or use of badge, name, title of officers, insignia, ritual or ceremony of certain orders and societies.

1. Any person who wilfully wears the badge or the button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States, or the Military Order of Foreign Wars of the United States, or the badge or button of the Spanish war veterans, or the Order of Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or of any society, order or organization, of ten years' standing in the state of New York, or uses the same to obtain aid or assistance within this state, or wilfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, order or organization, is guilty of a misdemeanor.

2. Any person who shall wilfully wear the shield of the Union Veteran Legion, or who shall use or wear the same to obtain aid or assistance thereby within this state, unless he shall be entitled to use or wear the same, under the rules and regulations of the Union Veteran Legion, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment for a term not to exceed thirty days in the county jail, or a fine not to exceed twenty dollars, or by both such fine and imprisonment.

Derivation: First par., Penal Code, § 674a, added L. 1893, ch. 692, as amended L. 1894, ch. 505; L. 1896, chs. 366, 1002; L. 1899, ch. 184; L. 1900, ch. 508; L. 1905, ch. 590. Second par., L. 1894, ch. 259.

ARTICLE 202.

SUICIDE.

SECTION 2300. Suicide defined.
2301. No forfeiture imposed for suicide.
2302. Attempting suicide.
2303. Punishment for attempting suicide.
2304. Abetting and advising suicide.
2305. Abetting and advising an attempt at suicide.
2306. Incapacity of person aided, no defense.

§ 2300. Suicide defined.

Suicide is the intentional taking of one's own life.

Derivation: Penal Code, § 172.

Shipman v. Protected Home Circle (1903), 174 N. Y. 398, 405, modf'g 66 App. Div. 448, 73 N. Y. Supp. 594.

§ 2301. No forfeiture imposed for suicide.

Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator, no forfeiture is imposed.

Derivation: Penal Code, § 173.

Darrow v. Family Fund Society (1889), 116 N. Y. 542, aff'g 42 Hun, 245; Meacham v. New York, etc. Assn. (1890), 120 N. Y. 242, aff'g 46 Hun, 363; Shipman v. Protected Home Circle (1903), 174 N. Y. 405, 406, mod'f'g 66 App. Div. 448, 73 N. Y. Supp. 594; see also Freeman v. Nat. Ben. Society, 5 N. Y. St. 82.

§ 2302. Attempting suicide.

A person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which, if committed upon or towards another person and followed by death as a con-

sequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

Derivation: Penal Code, § 174.

State v. Carney, 55 Atl. 44.

§ 2303. Punishment for attempting suicide.

Every person guilty of attempting suicide is guilty of felony, punishable by imprisonment in a state prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

Derivation: Penal Code, § 178.

Darrow v. Family Fund Society (1886), 42 Hun, 245, aff'd 116 N. Y. 542; see also Matter of Card, 8 N. Y. Supp. 297, 28 N. Y. St. 529; Blackburn v. State, 23 Ohio St. 146; Coyle v. Com., 100 Pa. St. 573; 2 Lawson Cr. Def. 441; Wolf v. Conn. Mut. Life, 2 Flipp, 358; Terry v. Life Ins. Co., 15 Wall. 580; Coverston v. Conn. Mut. Life Ins. Co., 4 Bige. 169; Coffey v. Home Life Ins. Co., 4 Bige. 508; Phadenhauer v. Germania Life Ins. Co., 5 Bige. 508; McClure v. Mut. Life Ins. Co., 4 Bige. 320.

§ 2304. Abetting and advising suicide.

A person who wilfully, in any manner, advises, encourages, abets, or assists another person in taking the latter's life, is guilty of manslaughter in the first degree.

Derivation: Penal Code, § 175.

People v. Kent (1903), 41 Misc. 191, 83 N. Y. Supp. 948; see also People v. Burnett (Ill.), 68 N. E. 505; Com. v. Bowen, 13 Mass. 356, 2 Wheel. Cr. Cas. 226; Com. v. Mink, 123 Mass. 422; Blackburn v. State, 23 Ohio St. 146; Reg. v. Jessup, 10 Crim. L. Mag. 862.

§ 2305. Abetting and advising an attempt at suicide.

A person who wilfully, in any manner, encourages, advises, assists or abets another person in attempting to take the latter's life, is guilty of a felony.

Derivation: Penal Code, § 176.

§ 2306. Incapacity of person aided, no defense.

It is not a defense to a prosecution under either of the last two sections, that the person who took, or attempted to take, his own life, was not a person deemed capable of committing crime.

Derivation: Penal Code, § 177.

ARTICLE 204.

TAXES.

SECTION 2320. Appraiser under taxable transfers law taking fee or reward.
2321. Making false statement in reference to taxes.

§ 2320. Appraiser under taxable transfers law taking fee or reward.

An appraiser appointed by virtue of the taxable transfers law, who takes any fee or reward from an executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay such tax, or any portion thereof, is guilty of a misdemeanor.

Derivation: Penal Code, § 48c, added L. 1893, ch. 692.

§ 2321. Making false statement in reference to taxes.

A person, who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, wilfully makes, as to any material matter, any statement which he knows to be false, is guilty of a misdemeanor.

Derivation: Penal Code, § 485.

ARTICLE 206.

TRADE-MARKS.

SECTION 2350. Trade-mark defined.
2351. Affixing defined.
2352. Article of merchandise defined.
2353. Imitation of a trade-mark defined.
2354. Offenses against trade-marks.
2355. Refilling or selling trade-mark bottles and vessels.
2356. Keeping trade-mark bottles and vessels with intent to refill or sell them.
2357. Search for trade-mark bottles and vessels kept in violation of law authorized.

§ 2350. Trade-mark defined.

A "trade mark" is a mark used to indicate the maker, owner or seller of an article of merchandise, and includes, among other things, any name of a person, or corporation, or any letter, word, device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, stopper, label or other mark, lawfully adopted by him, and usually affixed to an article of merchandise to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed or otherwise prepared by him; and also a signature or mark, used or commonly placed by a painter, sculptor or other artist, upon a painting, drawing, engraving, statue or other work of art, to indicate that the same was designed or executed by him.

Derivation: Penal Code, § 366, as amended L. 1882, ch. 384.

Congress and Emp. Co. v. High Rock Cong. Spring Co. (1871), 45 N. Y. 291, 6 Am. Rep. 82, rev'g 57 Barb. 526; Gillott v. Esterbrook (1872), 48 N. Y. 374, aff'g 47 Barb. 455; Meneely v. Meneely (1874), 1 Hun, 367, 62 N. Y. 427; Taylor v. Gillies (1874), 59 N. Y. 331, aff'g 5 Daly, 285; Caswell v. Davis (1874), 58 N. Y. 223, aff'g 4 Abb. Pr. (N. S.) 6, 35 How. Pr. 76; Phelan v. Collender (1875), 6 Hun, 244; Hier v. Abrahams (1880), 82 N. Y. 519; Smith v. Sixbury (1881), 25 Hun, 232; Wagner v. Daly (1893), 67 Hun, 477, 22 N. Y. Supp. 493; Cooke v. Miller (1901), 169 N. Y. 475, aff'g 53 App. Div. 120, 65 N. Y. Supp. 730; People v. Krivitzky (1901), 168 N. Y. 182, 16 N. Y. Cr. 55, aff'g 60 App. Div. 307, 70 N. Y. Supp. 173; Barrett Chemical Co. v. Stern (1903), 176 N. Y. 27, rev'g 71 App. Div. 616, 76 N. Y. Supp. 1009; People v. Strauss (1904), 94 App. Div. 454, 88 N. Y. Supp. 40; see also Amoskeag v. Spear, 2 Sandf. 599; Bininger v. Wattles, 28 How. Pr. 206; Booth v. Jarrett, 52 How. Pr. 169; Caswell v.

Davis, 4 Abb. Pr. (N. S.) 6, 35 How. Pr. 76; Cook v. Starkweather, 13 Abb. Pr. (N. S.) 392; Corwin v. Daly, 7 Bosw. 222; Faber v. Faber, 49 Barb. 357, 3 Abb. (N. S.) 115; Helmbold v. Helmbold Mfg. Co., 53 How. Pr. 453; Howard v. Henriques, 3 Sandf. 725; Lea v. Wolf, 1 S. C. 626, 15 Abb. Pr. (N. S.) 1, 46 How. Pr. 157; Meserole v. Tynberg, 36 How. Pr. 141, 4 Abb. Pr. (N. S.) 410; Newman v. Alvord, 49 Barb. 588, 35 How. Pr. 108, 51 N. Y. 189; Rellett v. Carlier, 61 Barb. 435, 11 Abb. Pr. (N. S.) 186; Stokes v. Landgraff, 17 Barb. 608; Town v. Stetson, 3 Daly, 53, 5 Abb. Pr. 218; Wolfe v. Burke, 7 Lans. 151, rev'd on other grounds, 56 N. Y. 115; Wolfe v. Goulard, 18 How. Pr. 64; Meridan Co. v. Parker, 39 Conn. 450, 12 Am. Rep. 410; Glendon Iron Works v. Uhler, 75 Pa. St. 467.
Clark v. Clark, 25 Barb. 76.

§ 2351. Affixing defined.

A trade-mark is deemed to be affixed to an article of merchandise, when it is placed in any manner in or upon:

1. The article itself; or,

2. A box, bale, barrel, bottle, case, cask, platter, or other vessel or package, or a cover, wrapper, stopper, brand, label or other thing, in, by or with which the goods are packed, inclosed, or otherwise prepared for sale or disposition.

Derivation: Penal Code, § 367, as amended L. 1882, ch. 384; L. 1904, ch. 494.

§ 2352. Article of merchandise defined.

The expression "article of merchandise," as used in sections twenty-three hundred and fifty and twenty-three hundred and fifty-one, signifies any goods, wares, work of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale.

Derivation: Penal Code, § 365, amended L. 1882, ch. 384.

§ 2353. Imitation of a trade-mark defined.

An "imitation of a trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by the use of words or letters, similar in appearance or in sound, or by any sign, device or other means whatsoever.

Derivation: Penal Code, § 368, as amended L. 1882, ch. 384.

Popham v. Cole (1876), 66 N. Y. 69, 6 J. & Sp. 274, 14 Abb. Pr. (N. S.) 206, aff'g 38 N. Y. Super. 274, 14 Abb. Pr. (N. S.) 206; Coleman v. Crump (1877), 70 N. Y. 573; People v. Fisher (1889), 50 Hun. 552, 3 N. Y. Supp.

786; Wagner v. Daly (1893), 67 Hun, 477, 22 N. Y. Supp. 493; see also Electro-Silicon Co. v. Levy, 59 How. Pr. 469; Brooklyn White Lead Co. v. Masury, 25 Barb. 416; Brown v. Mercer, 5 J. & Sp. 265.

Merrimack Mfg. Co. v. Garner, 4 E. D. Smith, 387, 2 Abb. 318; Williams v. Johnson, 2 Bosw. 1; Godillot v. Hazard, 7 Daly Reg. 773.

§ **2354.** [Am'd. 1099.] **Offenses against trade-marks.**

A person who:

1. Falsely makes or counterfeits a trade-mark; or,

2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or,

3. Knowingly sells, or keeps or offers for sale, an article of merchandise to which is affixed a false or counterfeit trade-mark, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or,

4. Has in his possession a counterfeit trade-mark, knowing it to be counterfeit, or a die, plate, brand or other thing for the purpose of falsely making or counterfeiting a trade-mark; or,

5. Makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, an article of merchandise with such a trade-mark or label as to appear to indicate the quantity, quality, character, place of manufacture or production, or persons manufacturing, packing, bottling, boxing or producing the article, but not indicating it truly; or,

6. Knowingly sells, offers or exposes for sale, any goods which are represented in any manner, by word or deed, to be the manufacture, packing, bottling, boxing or product of any person, firm or corporation, other than himself, unless such goods are contained in the original packages, box or bottle and under the labels, marks or names placed thereon by the manufacturer who is entitled to use such marks, names, brands or trademarks; or,

7. Shall sell or shall expose for sale any goods in bulk, to which no label or trade-mark shall be attached, and shall by representation, name or mark written or printed thereon, represent that such goods are the production or manufacture of a person who is not the manufacturer,

Is guilty of a misdemeanor and punishable for the first offense by a fine not less than fifty dollars nor more than five hundred dollars or imprisonment for not more than one year, or both such fine and imprisonment, and for each subsequent offense by im-

prisonment for not less than thirty days or more than one year, or by both such imprisonment and a fine of not less than five hundred dollars or more than one thousand dollars.

Derivation: Penal Code, § 364, as amended L. 1882, ch. 384; L. 1889, ch. 45. Sections 3, 5, 6 amended L. 1908, ch. 427, by which, also, the last paragraph was added.

Amended by L. 1909, ch. 240. In effect Apr. 22, 1909.

People v. Hoffheimer (1905), 110 App. Div. 423, 97 N. Y. Supp. 84, 19 Crim. Rep. 566.

§ 2355. Refilling or selling trade-mark bottles and vessels. Any person engaged in making, bottling, packing, selling or disposing of milk, ale, beer, cider, mineral water or other beverage, or in making, selling or disposing of articles of pastry, may register his title as owner of a trade-mark by filing with the secretary of state and the clerk of the county where the principal place of business of such person is situated, a description of the marks and devices used by him in his business, and in case the same has not been heretofore published according to the laws existing at the time of publication, causing the same to be published in a newspaper of the county, three weeks daily, if in the city of New York or Brooklyn, and weekly if in any other part of the state; but no trade-mark shall be filed which is not and can not become a lawful trade-mark, or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by another person. After such registration, the use without the consent of the owner of the trade-mark so described, or the filling of any bottle, siphon, barrel, platter, vessel, or thing for the purpose of sale, or for the sale, therein, of any article of the same general nature and quality which said bottle, siphon, barrel, platter, vessel or other thing before contained, without the obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle, siphon, barrel, platter, vessel or other thing so as to prevent its wrongful use, shall be deemed a misdemeanor.

Derivation: Penal Code, § 369, as amended L. 1882, ch. 384; L. 1885, ch. 513; L. 1904, ch. 494.

Mullins v. People (1862), 24 N. Y. 399, 23 How. Pr. 289; People v. Cannon (1893), 139 N. Y. 32, aff'g 63 Hun, 306, 18 N. Y. Supp. 25.

§ 2356. Keeping trade-mark bottles and vessels with intent to refill or sell them.

Any person engaged in the business of buying and selling bottles, siphons, barrels, platters, or other vessels or things, who shall with intent to defraud the registered owner of the trade-mark, knowingly sell or offer for sale any bottle, siphon, barrel, platter, vessel, or other thing, to any person, who he has reason to believe wrongfully intends to use the trade-mark upon it, or to fill such bottle, siphon, barrel, platter, vessel or other thing in violation of section twenty-three hundred and fifty-five, shall be deemed guilty of a misdemeanor.

Derivation: Penal Code, § 370, as amended L. 1882, ch. 384; L. 1904, ch. 494.

§ 2357. Search for trade-mark bottles and vessels kept in violation of law authorized.

Whenever a registered owner of a trade-mark, or his agent, makes oath before a magistrate that he has reason to believe and does believe, stating the grounds of his belief, that a bottle, siphon, barrel, platter, vessel or other thing to which is affixed a trade-mark belonging to him is being used or filled, or has been sold or offered for sale, by any person whomsoever, in violation of the preceding section, then the magistrate may issue a search warrant to discover the thing and cause the person having it in possession to be brought before him and may thereupon inquire into the circumstances, and if on examination, he finds that such person has been guilty of the offense charged, he may hold the offender to bail to await the action of the grand jury, and the offender shall also be liable to an action on the case for damages, for such wrongful use of such trade-mark at the suit of the owner thereof, and the party aggrieved, shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark, and to recover compensation therefor, in any court having jurisdiction over the person guilty of such wrongful use.

Derivation: Penal Code, § 371, as amended L. 1882, ch. 384; L. 1904, ch. 494.

Mullins v. People (1862), 24 N. Y. 399; People ex rel. Fellows v. Hogan (1890), 123 N. Y. 219, aff'g 55 Hun, 391, 8 N. Y. Supp. 451.

ARTICLE 208.

TRADING STAMPS.

SECTION 2360. Issue of trading stamps and similar devices.
2361. Issue and redemption of trading stamps and similar devices.

§ 2360. Issue of trading stamps and similar devices.

A person who shall:

1. Issue trading stamps or other devices to any person engaged in any trade, business or profession, with the promise, express or implied, that he will give to the person presenting to him such stamps or other devices, money or anything of value, without receiving from such person the value thereof, or make to any such person any concession or preference in any way, on account of the presentation of such trading stamps or other devices; or,

2. Being engaged in any trade, business or profession, shall distribute or present to any person dealing with him, any such trading stamp or other device, in consideration of any article or thing purchased of, or any services performed by him,

Shall be guilty of a misdemeanor.

3. It shall not be unlawful for any merchant or manufacturer to place his own tickets, coupons or other vouchers in or upon packages of goods sold or manufactured by him. Such tickets, coupons or other vouchers to be redeemed by such merchant or manufacturer either in money or merchandise, whether such packages are sold directly to the consumer or through retail merchants. Nor shall it be unlawful for any person to issue with such packages, tickets, coupons or other vouchers so issued by such merchant or manufacturer.

Derivation: Penal Code, § 384. Par. added L. 1900, ch. 768.

People ex rel. Appel v. Zimmerman (1905), 102 App. Div. 103, 108, 92 N. Y. Supp. 497; People ex rel. Madden v. Dycker (1902), 72 App. Div. 308, 76 N. Y. Supp. 111; State v. Dalton, 22 R. I. 77, 48 L. R. A. 775; Young v. Com. (Va.), 45 S. E. 327; Lansburgh v. District of Columbia, 16 App. D. C. 512.

§ 2361. Issue and redemption of trading stamps and similar devices.

1. No person shall sell or issue any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof either singly or in definite number to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in lawful money of the United States.

2. Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof either single or in definite number to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise shall, upon presentation redeem the same either in goods, wares, or merchandise or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed on the face thereof, provided the same be presented for redemption in number or quantity aggregating in money value not less than five cents in each lot.

3. Any person engaged in any trade, business, or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device which will entitle the holder thereof on presentation thereof either singly or in definite number, to receve either directly from the person issuing or selling same as set forth in the second paragraph hereof, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same as set forth in the second paragraph hereof, be liable to the holder thereof for the face value thereof and shall upon presentation of the same in lots or number aggregating in money value not less than five cents in each lot, redeem the same either in goods, wares or merchandise, or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed upon the face thereof.

4. No person, firm or corporation shall give, sell or deliver as

an inducement for or in connection with the sale of merchandise, any coupon, check, ticket, stamp, token or similar device redeemable in money or merchandse by any other person, firm or corporation, without the consent of the person, firm or corporation originally issuing the same and responsible for the redemption thereof.

5. Any person, firm or corporation who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor.

6. This section shall not apply to tickets, coupons or other vouchers placed by any merchant or manufacturer in or upon packages or goods sold or manufactured by him if such tickets, coupons or other vouchers are issued by such merchant or manufacturer in his own name, to be redeemed by him.

Derivation: Penal Code, § 384q, added L. 1904, ch. 657, except subd. 4, added L. 1908, ch. 428, by which, also, original subds. 4, 5 were renumbered as subds. 5 and 6, respectively.

People ex rel. Appel v. Zimmerman (1905), 102 App. Div. 103, 108, 92 N. Y. Supp. 479; People v. Marcus (1905), 110 App. Div. 261, 97 N. Y. Supp. 322.

ARTICLE 210.

TRAMPS.

SECTION 2370. Punishment of tramps.
2371. Punishment of tramps for certain offenses.
2372. Commutations of sentences of tramps.

§ 2370. Punishment of tramps.

Every tramp, upon conviction as such shall be punished by imprisonment at hard labor in the nearest penitentiary for not more than six months, and the expense during such imprisonment shall be paid by the state at the rate of thirty cents per day per capita. Any act of vagrancy by any person not a resident of the state shall be evidence that the person committing the same is a tramp within the meaning of this article.

Derivation: L. 1885, ch. 490, §§ 1, 2, as amended L. 1891, ch. 115.

§ 2371. Punishment of tramps guilty of certain offenses.

Any tramp who shall enter any building against the will of the owner or occupant thereof, under such circumstances as shall not amount to burglary, or wilfully or maliciously injure the person or property of another, which injury under existing law does not amount to felony, or shall be found carrying any firearms or other dangerous weapon, or burglar's tools, or shall threaten to do any injury to any person or to the real or personal property of another, when such offense is not now punishable by imprisonment in the state prison, shall be deemed guilty of felony, and on conviction, shall be punished by imprisonment in the state prison at hard labor for not more than three years. Any person being a resident of the town where the offense is committed may, upon view of any offense described in this section, apprehend the offender and take him before a justice of the peace or other competent authority.

Derivation: L. 1885, ch. 490, §§ 4, 5.

§ 2372. Commutations of sentences of tramps.

Any person convicted under this article shall be entitled to the same commutations of sentence as are now provided by law for any prisoners committed to the state prison or penitentiary.

Derivation: L. 1885, ch. 490, § 7

ARTICLE 212.

TREASON.

SECTION 2380. Treason against the state defined.
2381. Levying war defined.
2382. Treason, how punished.
2383. Resistance to a statute when levying war.

§ 2380. Treason against the state defined.

Treason against the people of the state consists in:

1. Levying war against the people of the state, within this state; or,

2. A combination of two or more persons by force to usurp the government of the state, or to overturn the same, shown by a forcible attempt, made within the state, to accomplish that purpose; or,

3. Adhering to the enemies of the state, while separately engaged in war with a foreign enemy, in a case prescribed in the constitution of the United States, or giving to such enemies aid and comfort within the state or elsewhere.

Derivation: Penal Code, § 37.

People v. Lynch, 11 Johns. 549; United States v. Hodges, 1 Wheel Cr. Cas. 477; Respublica v. McCarthy, 2 Dall 86; United States v. Hannay, 2 Wall Jr. 39; Roberts' case, 1 Dall. 39.

United States v. Hoxie, 1 Paine, 265; Ex Parte Bollman, 4 Cranch, 75, and Burr's Trial (Coombs' ed.), 312; United States v. Greathouse, 4 Sawy. 465, 2 Abb. 364.

§ 2381. Levying war defined.

To constitute levying war against the people of this state, an actual act of war must be committed. To conspire to levy war is not enough.

Derivation: Penal Code, § 39.

§ 2382. Treason, how punished.

Treason is punishable by death.

Derivation: Penal Code, § 38.

§ 2383. Resistance to a statute when levying war.

Where persons rise in insurrection with intent to prevent in general by force and intimidation, the execution of a statute of this state, or to force its repeal, they are guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war.

Derivation: Penal Code, § 40.

United States v. Hannay, 2 Wall Jr. 139, 203; United States v. Mitchell, 2. Dall. 348.

ARTICLE 214.

USURY.

SECTION 2400. Taking security upon certain property for usurious loans.

§ 2400. Taking security upon certain property for usurious loans.

A person who takes security, upon any household furniture, sewing machines, plate or silverware in actual use, tools or implements of trade, wearing apparel or jewelery, for a loan or forbearance of money, or for the use or sale of his personal credit, conditioned upon the payment of a greater rate than six per centum per annum or, who as security for such loan, use or sale of personal credit as aforesaid, makes a pretended purchase of such property from any person, upon the like condition, and permits the pledger to retain the possession thereof is guilty of a misdemeanor.

Derivation: Penal Code, § 378, as amended L. 1895, ch. 72; L. 1904, ch. 661.

People v. Hubbard (1894), 10 Misc. 104, 31 N. Y. Supp. 114; People v. Dunlap (1900), 32 Misc. 390, 66 N. Y. Supp. 161; People ex rel. Beebe v. Warden, etc. (1903), 176 N. Y. 577, aff'g 86 App. Div. 626, 83 N. Y. Supp. 1113; see also People v. Goldberg (Special Sessions, June, 1902), N. Y. L. J.; Forgotson v. Ranbitschek, 87 N. Y. Supp. 503.

ARTICLE 216.

WEIGHTS AND MEASURES.

SECTION 2410. Requiring more than the legal weight for a bushel.
2411. Using false weights and measures.
2412. Keeping false weights and measures.
2413. False weights and measures authorized to be seized.
2414. Weights and measures may be tested by committing magistrate and destroyed or delivered to district attorney.
2414a. Presumption of knowledge.
2415. False weights and measures to be destroyed after conviction of offender.
2416. Stamping false weight or tare on casks or packages.
2417. Regulations for sale of baled hay and straw.

§ 2410. Requiring more than the legal weight for a bushel.

Where potatoes, grains or other agricultural products are sold by the bushel, without agreement as to the weight, any person requiring a greater number of pounds for a bushel than as prescribed by section eight of the general business law is guilty of a misdemeanor.

Derivation: Penal Code, § 447d, added L. 1899, ch. 515.

§ 2411. Using false weights and measures.

A person who injures or defrauds another by using, with knowledge that the same is false, a false weight, measure, or other apparatus, for determining the quantity of any commodity, or article of merchandise, or by knowingly delivering less than the quantity he represents, is guilty of a misdemeanor.

Derivation: Penal Code, § 580.

§ 2412. Keeping false weights and measures.

A person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, is guilty of a misdemeanor.

Derivation: Penal Code, § 581.

§ 2413. False weights and measures authorized to be seized.

A person who is authorized or enjoined by law to arrest another person for a violation of the last two sections, is equally

authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Derivation: Penal Code, § 582.

§ 2414. Weights and measures may be tested by committing magistrate and destroyed or delivered to district attorney.

The magistrate to whom any weight or measure is delivered pursuant to the last section, must, upon the examination of the defendant, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice in his judgment require.

Derivation: Penal Code, § 583.

§ 2414-a. Presumption of knowledge.

The possession or use by any person of any false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise is presumptive evidence of knowledge by such person of the falsity of such weight, measure or other apparatus. (Added by L. 1911, ch. 53, in effect Sept. 1, 1911.)

§ 2415. False weights and measures to be destroyed after conviction of offender.

Upon the conviction of the defendant, the district attorney must cause any weight or measure in respect whereof the defendant stands convicted, and which remains in the possession or under the control of the district attorney, to be destroyed.

Derivation: Penal Code, § 584.

§ 2416. Stamping false weight or tare on casks or packages.

A person who knowingly marks or stamps false or short weights, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

Derivation: Penal Code, § 585.

§ 2417. Regulations for sale of baled hay and straw.

A person who:

1. Sells or offers for sale baled hay or straw containing more than twenty pounds of wood to the bale, the weight of which is two hundred pounds or upward, or more than ten pounds of wood

to the bale the weight of which is less than two hundred pounds; or,

2. Sells or offers for sale any bale of hay or straw upon which the correct gross weight is not plainly marked or which weighs more than five pounds less than the gross weight so marked thereupon,

Is guilty of a misdemeanor.

Derivation: Penal Code, § 585a, added L. 1893, ch. 692.

ARTICLE 218.

WITNESS.

SECTION 2440. Bribing witness.
2441. Preventing or dissuading witness from attending.
2442. Deceiving a witness.
2443. Restriction of witness' privilege.
2444. Convicted person a competent witness.
2445. Husband or wife as witness.

§ 2440. Bribing witness.

A person who gives or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a felony.

Derivation: Penal Code, § 113.

§ 2441. Preventing or dissuading witness from attending.

A person who wilfully prevents or dissuades any person who has been duly summoned or supœnaed as a witness from attending, pursuant to the summons or subpœna, is guilty of a misdemeanor.

Derivation: Penal Code, § 111.

Morse v. Grimke, 8 N. Y. Supp. 1, 18 Civ. Proc. 40.

§ 2442. Deceiving a witness.

A person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, conducted by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

Derivation: Penal Code, § 108.

Matter of Eldridge (1880), 82 N. Y. 161.

§ **2443. Restriction of witness' privilege.**

No person shall be excused from testifying, in any civil action or legal proceeding, to any facts showing that a thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon a criminal prosecution.

Derivation: Penal Code, § 142.

Chappell v. Chappell (1906), 116 App. Div. 578, 101 N. Y. Supp. 846.

§ **2444. [Am'd, 1909.] Convicted person a competent witness.**

A person heretofore or hereafter convicted of any crime is, notwithstanding, a competent witness, in any cause or proceeding, civil or criminal, but the conviction may be proved for the purpose of affecting the weight of his testimony, either by the record, or by his cross-examination, upon which he must answer any proper question relevant to that inquiry and the party cross-examining is not concluded by the answer to such question.

Derivation: Penal Code, § 714.

Amended by L. 1909, ch. 240. In effect Apr. 22, 1909.

People v. Satterlee (1875), 5 Hun, 167; People v. Noyes (1877), cited in Sims v. Sims, 12 Hun, 231; People v. Brown (1878), 72 N. Y. 571, 28 Am. Rep. 183, aff'g 8 Hun, 562; People v. Casey (1878), 72 N. Y. 393; National Trust So. v. Gleason (1879), 77 N. Y. 400, 33 Am. Rep. 632, note; People v. Crapo (1879, 76 N. Y. 288, 32 Am. Rep. 302; People v. McGloin (1883), 91 N. Y. 241, 12 Abb. N. C. 172, 1 N. Y. Cr. 154, aff'g 28 Hun, 155, 1 N. Y. Cr. 105; People v. Noelke (1883), 94 N. Y. 138; People v. Irving (1884), 95 N. Y. 541; People v. Burns (1884), 33 Hun. 296, 2 N. Y. Cr. 415; People v. Parr (1886), 42 Hun, 313, 4 N. Y. Cr. 546, 5 N. Y. Cr. 36; People v. O'Neil (1888), 109 N. Y. 266, 48 N. Y. Cr. 331; Spiegel v. Hays (1889), 118 N. Y. 660; Morenus v. Crawford (1889), 51 Hun, 89, 5 N. Y. Supp. 453; People v. Rose (1889), 52 Hun, 33, 4 N. Y. Supp. 787; People v. Chapleau (1890), 121 N. Y. 266; People v. Bosworth (1892), 64 Hun, 72, 19 N. Y. Supp. 114; People v. Williams (1895), 92 Hun, 354, 36 N. Y. Supp. 511, aff'd. 149 N. Y. 1; People v. Sebring (1895), 14 Misc. 31, 35 N. Y. Supp. 237; People v. Dorthy (1897), 20 App. Div. 308, 46 N. Y. Supp. 970, aff'd 156 N. Y. 237; People v. Sullivan (1898), 34 App. Div. 544, 54 N. Y. Supp. 538; 13 N. Y. Cr. 308; People v. Goodman (1904), 43 Misc. 509, 89 N. Y. Supp. 522; see also People v. Johnson, 57 Cal. 571; State v. Grant, 79 Mo. 113, 49 Am. Rep. 218; State v. Foley, 15 Nev. 64, 37 Am. Rep. 458.

§ **2445. Husband or wife as witness.**

The husband or wife of a person indicted or accused of a crime *is in* all cases a competent witness, on the examination or trial

of such person; but neither husband nor wife can be compelled to disclose a confidential communication, made by one to the other during their marriage.

Derivation: Penal Code, § 715.

Wilke v. People (1873), 53 N. Y. 525; People v. Houghton (1881), 24 Hun, 501; People v. Bosworth (1882), 64 Hun, 72, 19 N. Y. Supp. 114; People v. Hovey (1883), 29 Hun, 382; People v. Petmecky (1884), 2 N. Y. Cr. 450, aff'd 99 N. Y. 415; People v. Wentworth (1885), 4 N. Y. Cr. 207; People v. Wood (1891), 126 N. Y. 249; People v. Truck (1902), 170 N. Y. 204, 212, 16 N. Y. Cr. 349; see also People v. Briggs, 60 How. Pr. 31, 36; People v. Lewis, 16 N. Y. Supp. 881; Fill v. People, 19 Colo. 469, 41 Am. St. Rep. 261.

ARTICLE 220.

WOMEN.

SECTION 2460. Compulsory prostitution of women.
2461. Punishment of woman for concealing birth of issue.

§ 2460. Compulsory prostitution of women.

1. The importation of women and girls into this state or the exportation of women and girls from this state for immoral purposes is hereby prohibited and whoever shall induce, entice or procure, or attempt to induce, entice or procure, to come into this state or to go from the state, any woman or girl for the purpose of prostitution or concubinage, or for any other immoral purpose, or to enter any house of prostitution in this state or any one who shall aid any such woman or girl in obtaining transportation to or within this state, shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding five thousand dollars.

2. Any person who shall place any female in the charge or custody of any other person for immoral purposes or in a house of prostitution or elsewhere with intent that she shall live a life of prostitution; or any person who shall compel or shall induce, entice or procure, or attempt to induce, entice, procure or compel any female to reside with him or with any other person for immoral purposes, or for the purposes of prostitution or shall compel or attempt to induce, entice, procure or compel any such female to reside in a house of prostitution or compel or attempt to induce, entice, procure or compel her to live a life of prostitution shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for not less than two years nor more than twenty years and by a fine not exceeding five thousand dollars.

3. Any person who shall induce, entice or procure, or attempt to induce, entice or procure any woman or girl for the purpose of prostitution or concubinage, or for any other immoral purpose, or to enter any house of prostitution in this state shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding five thousand dollars.

4. Any person who shall receive any money or other valuable thing for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to co-habit with any male person or persons to whom she is not married shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding one thousand dollars.

5. Any person who shall pay any money or other valuable thing to procure any female for the purpose of placing her for immoral purposes in any house of prostitution or elsewhere, with or without her consent, shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding five thousand dollars.

6. Any person who shall knowingly receive any money or other valuable thing for or on account of procuring and placing in the custody of another person for immoral purposes any woman, with or without her consent, shall be guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than three years nor more than twenty-five years and by a fine not exceeding five thousand dollars.

7. Any person who shall hold, detain, restrain or attempt to hold, detain or restrain in any house of prostitution or other place, any female for the purpose of compelling such female, directly or indirectly, by her voluntary or involuntary service or labor to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred in such house of prostitution or in any other place shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two nor more than twenty years and by a fine not exceeding five thousand dollars.

8. Any person who shall knowingly accept, receive, levy, or appropriate any money or other valuable thing without consideration, from the proceeds or earnings of any woman engaged in prostitution shall be deemed guilty of a felony and, on conviction thereof, shall be punishable by imprisonment for a period of not less than two years nor more than twenty years and by a fine not exceeding one thousand dollars. Any such acceptance, receipt, levy, or appropriation of such money or valuable thing shall upon any proceeding or trial for violation of this section be presumptive evidence of lack of consideration.

9. No conviction shall be had under this section upon the testimony of the female unless supported by other evidence. (Amended by L. 1910, ch. 618, in effect June 24, 1910.)

Derivation: Penal Code, § 282a, added L. 1906, ch. 413.

§ **2461. Punishment of woman for concealing birth of issue.**

A woman, who, having been convicted of endeavoring to conceal the still-birth of an issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death, is punishable by imprisonment in a state prison not exceeding five years, and not less than two years.

Derivation: Penal Code, § 693.

Original § 2461 repealed and § 1943 renumbered § 2461 by L. 1909, ch. 524. In effect May 27, 1909.

ARTICLE 222.

WRECKS.

SECTION 2480. Keeping wrecked goods a misdemeanor.
2481. Defacing marks upon wrecked property.
2482. Officer unlawfully detaining wrecked property.

§ 2480. Keeping wrecked goods a misdemeanor.

A person, who takes away goods or other property not his own from a stranded vessel, or any goods or other property cast by the sea upon the land or found in a bay or creek, or who knowingly becomes possessed of any such goods or other property, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or one of the coroners or wreck masters of the county where the same was found, is guilty of a misdemeanor.

Derivation: Penal Code, § 538.

People ex rel. Bidwell v. Pitts (1906), 111 App. Div. 319, 97 N. Y. Supp. 509, 19 Cr. Rep. 573; see also Dayton's Case, 2 City Hall Rec. 167.

§ 2481. Defacing marks upon wrecked property.

A person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership thereof, is guilty of a misdemeanor.

Derivation: Penal Code, § 372.

Baker v. Hoag (1853), 7 N. Y. 555.

§ 2482. Officer unlawfully detaining wrecked property.

An officer, whose duties pertain in any way to wrecked property, who, without authority of law, detains such property or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of such duties, is guilty of a misdemeanor.

Derivation: Penal Code, § 374.

ARTICLE 224.

REPEAL OF PROVISIONS OF PENAL LAW MUST BE EXPLICIT; LAWS REPEALED; TIME OF TAKING EFFECT.

SECTION 2500. Repeal of provisions of penal law must be explicit.
2501. Laws repealed.
2502. Time of taking effect

§ 2500. Repeal of provisions of penal law must be explicit.

No provision of this chapter, or any part thereof, shall be deemed repealed, altered or amended by the passage of any subsequent statute inconsistent therewith, unless such statute shall explicitly refer thereto and directly repeal, alter or amend this chapter accordingly.

Derivation: Penal Code, § 728, added L. 1886, ch. 31.

Mongeon v. People (1874), 55 N. Y. 618, aff'g 2 T. & C. 128; People v. Maxwell (1894), 83 Hun, 157, 31 N. Y. Supp. 564; American Society v. City of Gloversville, (1894), 78 Hun, 40, 29 N. Y. Supp. 257; People v. Cleary (1895), 13 Misc. 546, 35 N. Y. Supp. 588; People v. Koenig (1896), 9 App. Div. 436, 41 N. Y. Supp. 283; People v. Jensen (1904), 99 App. Div. 355, 90 N. Y. Supp. 1062, 19 Cr. Rep. 5; see also People v. Hatter, 22 N. Y. Supp. 690, Clearwater, J.; District of Columbia v. Hutton, 143 U. S. 127; United States v. Claflin, 97 U. S. 546.

§ 2501. Laws repealed.

All acts and parts of acts which are inconsistent with the provisions of this chapter are repealed, so far as they impose any punishment for crime, except as herein provided.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Derivation: First par., Penal Code, § 726.

People v. Bernardo (1883), 1 N. Y. Cr. 245; Matter of McMahon (1883), 64 How. 285, 1. N. Y. Cr. 58; People v. McTameney (1883), 30 Hun, 505, 13 Abb. N. C. 55, 1 N. Y. Cr. 437; People v. Russell (1885), 3 N. Y. Cr. 475; People ex rel. McDonald v. Keeler (1885), 99 N. Y. 463, 3 N. Y. Cr. 354, rev'g 32 Hun. 563; People v. Jaehne (1886), 103 N. Y. 182, 4 N. Y. Cr. 478, aff'd. 128 U. S. 189, 6. N. Y. Cr. Rep. 237; People v. Rontey (1889), 117 N. Y. 624, aff'g 4 N. Y. Supp. 235, 6 N. Y. Cr. 249; see also Matter of Hallenbeck, 65 How. 401; People v. Hatter, 22 N. Y. Supp. 688; Rockwood v. Oldfield, 2 N. Y. St. 331.

§ 2502. Time of taking effect.

This chapter shall take effect immediately.

Derivation: Penal Code, § 727, as amended L. 1882, ch. 102.

People v. Beckwith (1888), 108 N. Y. 72, 7 N. Y. Cr. 162 aff'g 45 Hun, 222.

SCHEDULE OF LAWS REPEALED.

(Repealed by L. 1909, Ch. 88, § 2501.)

		Sections
Revised Statutes.....	Part 1, chapter 20, title 2.	4
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* See L. 1909, ch. 240, §§ 98, 101.



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1896	553	All
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1897	549	All
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1898	325	All
1898	330	All
1898	394	All
1898	555	10
1898	657	All
1898	663	All
1898	664	5
1898	671	All
1899	12	All
1899	184	All
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1899	316	All
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1899	343	All
1899	475	All
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1899	529	All
1899	530	All
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1904	489	All
1904	494	All
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1904	649	All
1904	657	All
1904	659	All
1904	661	All
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1905	279	1
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1905	326	All
1905	366	All
1905	440	All
1905	441	All
1905	442	All
1905	443	All
1905	556	All
1905	590	All
1905	625	All
1905	655	All
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1907	582	All
1907	583	All
1907	584	All
1907	626	All
1907	645	All
1907	649	All
1907	682	All
1907	683	All
1907	737	All
1907	738	All
1907	741	All
1908	93	All
1908	118	All
1908	133	All
1908	157	All
1908	276	All
1908	277	All
1908	427	All
1908	428	All
1908	449	All
1908	458	All
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PART 2

CODE OF CRIMINAL PROCEDURE



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NOTE

BY

BOARD OF STATUTORY CONSOLIDATION

SUBMITTED IN ITS REPORT RELATIVE TO CODE OF CRIMINAL PROCEDURE AMENDMENTS.

The statute creating the board authorized it to prepare such amendments to existing laws as it might deem proper and necessary to condense and simplify the practice in the courts and to adapt the procedure to existing conditions. This language involved a consideration by the board of all of the practice in the courts embracing the practice in criminal as well as in civil cases. The treatment which the board has made of the civil practice has been set forth in a note preceding the act amending the Code of Civil Procedure. The same reasons which prompted the board to defer action upon the revision of the Code of Civil Procedure apply to the Code of Criminal Procedure. It was deemed best to leave the whole subject of practice to be considered in its entirety apart from the work of consolidating the substantive statutes, eliminating however as the consolidation of the substantive statutes proceeded such substantive matter the elimination of which would not interfere with the civil or criminal practice. When the Consolidated Laws shall have been adopted all the general substantive statutes of the State will have been disposed of and the way thus will be made clear for an unincumbered consideration of the practice in the courts. The board, therefore, reports an amendatory act incorporating into the Code of Criminal Procedure such provisions of criminal practice as were found in the Sessions Laws, making such changes in the present Code of Criminal Procedure as were found necessary by reason of the preparation of the Consolidated Laws. This treatment will not disturb the criminal practice but will leave it intact for a revision when undertaken.

Respectfully,

ADOLPH J. RODENBECK, *Chairman.*
WILLIAM B. HORNBLOWER
JOHN G. MILBURN,
ADELBERT MOOT.
Board of Statutory Consolidation.



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SHOWING THE PROVISIONS OF THE REVISED STATUTES, SESSION LAWS AND CODE OF CIVIL PROCEDURE WHICH ARE CONSOLIDATED IN THE CODE OF CRIMINAL PROCEDURE.

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R. S., Pt. 8, Ch. 1, Tit. 4, § 37	222-a
38	222-b
39	222-c
R. S., Pt. 4, Ch. 2, Tit. 4, § 1, as amended by L. 1896, Ch. 574, § 1	229-a
3, amended by L. 1890, Ch. 156, § 1	229-b
4	229-c
5, amended by L. 1896, Ch. 84, § 1	229-d
6, amended by L. 1880, Ch. 122, § 1	229-e
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8, 9	944-a
10	482-a
R. S., Pt. 4, Ch. 2, Tit. 7, § 29	10-a
39	10-b
R. S., Pt. 4, Ch. 3, Tit. 2, § 70, as amended by L. 1889, Ch. 382, § 1	485-a
L. 1836, Ch. 506, §§ 1, 4	619-b, 615-a
L. 1841, Ch. 332, § 1	229-h
L. 1845, Ch. 180, §§ 18-20	611-a, 610-a 619-a
L. 1847, Ch. 280, § 25, amended L. 1880, Ch. 354, § 1	182
L. 1847, Ch. 460, Tit. 3, §§ 157, 158	298-a, 298-b
L. 1857, Ch. 504, §§ 1-8	952-h-952-o
L. 1860, Ch. 135	*490-b
L. 1861, Ch. 333, § 2	221-a
L. 1862, Ch. 372	740-a
L. 1864, Ch. 379, §§ 1-3	789-a
L. 1866, Ch. 692, § 3, amended L. 1884, Ch. 188, § 1	740-a
L. 1866, Ch. 692, § 4	740-a
L. 1866, Ch. 692, § 8, amended L. 1869, Ch. 280, § 1; L. 1875, Ch. 324, § 1; L. 1877, Ch. 89, § 1	740-b
L. 1869, Ch. 280, § 1, amended L. 1875, Ch. 324, § 1; L. 1877, Ch. 89, § 1	740-b
L. 1872, Ch. 181, § 6, as amended L. 1875, Ch. 352, § 1	898-a
L. 1873, Ch. 357, §§ 1 2	898-a
L. 1874, Ch. 446, Tit. 1, Art. 2, § 21, amended L. 1876, Ch. 267, § 1	495-a
L. 1874, Ch. 446, Tit. 1, Art. 2, § 26, amended L. 1897, Ch. 451, § 1; L. 1898, Ch. 417, § 1	886
L. 1875, Ch. 324, § 1, amended L. 1877, Ch. 89, § 1	740-b

* Repealed by L. 1909, Ch. 240, § 85.

	Criminal Code Sections.
L. 1875, Ch. 352, § 1	398-a
L. 1876, Ch. 182, § 1	393-a
L. 1876, Ch. 267, § 1	495-a
L. 1877, Ch. 89, § 1,	740-b
L. 1878, Ch. 286, § 1	774
L. 1878, Ch. 290, § 1, amended L. 1881, Ch. 614, § 1	514-a
L. 1880, Ch. 122, § 1	229-c
L. 1880, Ch. 354, § 1	132
L. 1881, Ch. 614, § 1	514 a
L. 1884, Ch. 188, § 1	740-a
L. 1885, Ch. 348, § 1, amended L. 1886, Ch. 131, § 1; L. 1894, Ch. 82, § 1; L. 1895, Ch. 661, § 1; L. 1899, Ch. 45, § 1; L. 1899, Ch. 516, § 1; L. 1907, Ch. 222, § 1; L. 1907, Ch. 587, § 1	952-p
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L. 1886, Ch. 131, § 1, amended L. 1894, Ch. 82, § 1; L. 1895, Ch. 661, § 1; L. 1899, Ch. 45, § 1; L. 1899, Ch. 516, § 1; L. 1907, Ch. 222, § 1; L. 1907, Ch. 587, § 1	952-p
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L. 1895, Ch. 661, § 2, amended L. 1897, Ch. 25, § 1; L. 1899, Ch. 45, § 2; L. 1899, Ch. 516, § 5; L. 1900, Ch. 329, § 1; L. 1904, Ch. 354, § 1; L. 1907, Ch. 222, § 2	952-v
L. 1896, Ch. 34, § 1	229-d
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§ 911. St. Agnes Training School v. County of Erie (1910), 68 Misc. 648, 652, 124 N. Y. Supp. 984.

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STATE OF NEW YORK

CODE CRIMINAL PROCEDURE

[Laws 1881, Chapter 442, as amended 1910.]

AN ACT to Establish a Code of Criminal Procedure.

PASSED June 1, 1881; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

PRELIMINARY PROVISIONS.

SECTION 1. Title of the Code.
2. Divisions of the Code.
3. No person punishable but on legal conviction.
4. Crimes, how prosecuted.
5. Criminal action defined.
6. Parties to a criminal action.
7. The party prosecuted known as defendant.
8. Rights of defendant in a criminal action.
9. Second prosecution for the same crime prohibited.
10. No person to be a witness against himself in a criminal action or to be unnecessarily restrained.
10a. Searching prisoners.
10b. Prisoners brought into court without *habeas corpus*.
10c. Disposition of fines imposed, etc.

§ 1. Title of the Code.

This act shall be known as the Code of Criminal Procedure of the State of New York.

§ 2. Divisions of the Code.

This Code is divided into six parts. The first relates to the courts having original jurisdiction in criminal actions;

The second relates to the prevention of crime;

The third relates to the judicial proceedings for the removal of public officers by impeachment or otherwise;

The fourth relates to the proceedings in criminal actions prosecuted by indictment;

The fifth relates to proceedings in special sessions and police courts;

The sixth relates to special proceedings of a criminal nature.

§ 3. No person punishable but on legal conviction.

No person can be punished for a crime except upon legal conviction in a court having jurisdiction thereof.

Cameron v. Tribune Assn. (1890), 27 St. Rep. 912, 55 Hun 607, 7 N. Y. Supp. 789; Matter of Deuel (1906), 116 App. Div. 515, 101 N. Y. Supp. 1087.

§ 4. Crimes, how prosecuted.

A crime must be prosecuted by indictment, except:

1. Where proceedings are had for the removal of a civil officer of the state on impeachment by the assembly for willful or corrupt misconduct in office;

2. Where proceedings are had for the removal of justice of the peace, police justices and justices of justices' courts and their clerks;

3. A crime arising in the militia when in actual service, and in the land and naval forces in time of war, or which this state may keep with the consent of congress in time of peace;

4. Such crimes as are hereinafter or in special statutes specified as cognizable by courts of special sessions and police courts.

Steinert v. Sobey (1897), 14 App. Div. 507, 44 N. Y. Supp. 146; 78 St. Rep. 146; People v. Ausem (1901), 68 App. Div. 390, 71 N. Y. Supp. 601; People v. Wendell (1908), 112 N. Y. Supp. 301, 59 Misc. 357.

People ex rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 857, 114 N. Y. Supp. 833, Revd. 195 N. Y. 190.

§ 5. Criminal action defined.

The proceeding, by which a party charged with a crime is accused and brought to trial and punishment, is known as a criminal action.

Fairchild v. Edson (1897), 154 N. Y. 213; People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 349, 55 N. Y. Supp. 472.

§ 6. Parties to a criminal action.

A criminal action is prosecuted in the name of the people of the State of New York, as plaintiffs, against the party charged with crime.

People v. Johnson (1887), 104 N. Y. 213, 5 Crim. Rep. 213; People ex rel Gardiner v. Olmstead (1898), 25 Misc. 349, 55 N. Y. Supp. 472.

§ 7. The party prosecuted known as defendant.

The party prosecuted in a criminal action is designated in this Code as the defendant.

People v. Johnson (1887), 104 N. Y. 215, 5 Crim. Rep. 218.

§ 8. Rights of defendant in a criminal action.

In a criminal action the defendant is entitled:

1. To a speedy and public trial;

2. To be allowed counsel as in civil actions, or he may appear and defend in person and with counsel; and,

3. To produce witnesses in his behalf, and to be confronted with the witnesses against him in the presence of the court, except that where the charge has been preliminarily examined before a magistrate, and the testimony reduced by him to the form of a deposition in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine, the witness, or where the testimony of a witness on the part of the people, has been taken according to the provisions of section two hundred and nineteen of this Code, the deposition of the witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found in the state.

People v. Fish (1891), 125 N. Y. 136, 34 St. Rep. 845; People v. Corey (1898), 157 N. Y. 347, 13 Crim. Rep. 384; People v. Hall (1900), 51 App. Div. 60, 64 N. Y. Supp. 433; People ex rel. Devoe v. Kelly (1884), 32 Hun 539; People v. Williams (1885), 35 Hun 522, 3 Crim. Rep. 63; People v. Palmer (1887), 43 Hun 401, 5 Crim. Rep. 111, aff'd 109 N. Y. 413; Thorp v. Munro (1888), 47 Hun 251; People v. Hildebrandt (1896), 16 Misc. 197, 38 N. Y. Supp. 958; People v. Davis (1892), 46 St. Rep. 215, 19 N. Y. Supp. 781; Matter of Buffalo, N. Y. & Erie R. R. Co. (1897), 74 St. Rep. 350, 37 N. Y. Supp. 1048; People v. Fuller (1900), 68 N. Y. Supp. 743; People v. Johnson (1887), 5 Crim. Rep. 219; People v. Hall (1898), 23 Misc. 482, 49 N. Y. Supp. 158; People v. Wolf (1905), 188 N. Y. 464, 477; People v. Elliot (1902), 172 N. Y. 146, 148; People v. Harber (1905), 100 App. Div. 317, 91 N. Y. Supp. 571; People v. Connolly (1903), 88 App. Div. 306, 84 N. Y. Supp. 617; Vogel v. American Bridge Co. (1903), 88 App. Div. 68, 84 N. Y. Supp. 799; People v. Dundon (1906), 113 App. Div. 370, 98 N. Y. Supp. 1048; People v. Gilhooley (1905), 108 App. Div. 234, 237, 95 N. Y. Supp. 636; People v. Bromwich (1909), 135 App. Div. 67.

§ 9. Second prosecution for the same crime prohibited.

No person can be subjected to a second prosecution for a crime for which he has once been prosecuted, and duly convicted or acquitted.

Boon v. McGucken (1893), 67 Hun 251, 22 N. Y. Supp. 424; People v. Hayes,

(1894), 9 Crim. Rep. 81 ; People v. Shields, (1901), 34 Misc. 257, 69 N. Y. Supp. 620; People v. Smith (1902), 172 N. Y. 210, 227; People v. Fishman (1909), 64 Misc. 256, 119 N. Y. Supp. 89.

§ 10. No person to be a witness against himself in a criminal action or to be unnecessarily restrained.

No person can be compelled in a criminal action to be a witness against himself, nor can a person charged with crime be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

People ex rel. Taylor v. Forbes (1895) 143 N. Y. 219, rev'g 77 Hun 612; Matter of Taylor (1894), 60 St. Rep. 144, 8 Misc. 170, 28 N. Y. Supp. 500 ; People v. Fish, (1891), 8 Crim. Rep. 138 ; Matter of Attorney-General (1897), 21 Misc. 109, 47 N. Y. Supp. 20; People v. Willis (1898), 23 Misc. 573, 52 N. Y. Supp. 808; People v. Mondon (1886), 103 N. Y. 220, 57 Amer. Rep. 709, rev'g 38 Hun 198, 4 N. Y. Cr. 123 ; Matter of Kaffenburgh (1907), 188 N. Y. 52 ; People v. Gillette, (1908), 126 App. Div. 665 ; People v. Cahill (1908), 126 App. Div. 391 ; People ex rel. Lewisohn v. O'Brien (1908), 81 App. Div. 60, 80 N. Y. Supp. 816.

§ 10-a. Searching prisoners.

Any magistrate who shall commit any person, charged with any offense, to prison, or by whom any vagrant or disorderly person shall be committed, may cause such person to be searched for the purpose of discovering any property he may have; and if any property be found, the same may be taken and applied to the support of such person while in confinement. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 746, § 29.

§ 10-b. Prisoners brought into court without habeas corpus.

When it shall be necessary for any purpose, to bring any prisoner confined in a county jail, before the supreme court, a county court or a court of general sessions, which may be sitting in such county, such court may by order, and without issuing any writ of habeas corpus, or other process, direct such prisoner to be brought before them accordingly. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 748, § 39.

§ 10-c. Disposition of fines imposed for violation of laws relating to the game of policy.

All fines, penalties and forfeitures imposed and collected under

the provisions of every act passed or which may be passed relating to or affecting the game of policy, in every case where the prosecution shall be instituted or conducted by a society incorporated and having as an object the prevention or suppression of the game of policy, must be paid on demand to such society. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1905, ch. 168, 1.

PART I.

OF THE COURTS HAVING ORIGINAL JURISDICTION IN CRIMINAL ACTIONS.

TITLE I. OF THE COURTS OF ORIGINAL CRIMINAL JURISDICTION IN GENERAL.
II. OF THE COURT FOR THE TRIAL OF IMPEACHMENTS.
III. OF THE SUPREME COURT.
IV. OF THE CITY COURTS.
V. OF THE COUNTY COURTS.
VI. OF THE COURTS OF SPECIAL SESSIONS AND POLICE.

TITLE I.

OF THE COURTS OF ORIGINAL CRIMINAL JURISDICTION IN GENERAL.

SECTION 11. Of the courts of original criminal jurisdiction.
11a. Probation officer; appointment; duties; powers; procedure; transfers.

§ 11. Of the courts of original criminal jurisdiction.

The following are the courts of justice in this state having original jurisdiction of criminal actions:

1. The court for the trial of impeachments;
2. The supreme court;
3. The county courts in counties other than New York;
4. The city courts of Utica and Oswego;
5. The mayor's court of the city of Hudson;
6. The court of general sessions in the city and county of New York;
7. The courts of special sessions;
8. The police courts.

The courts of special sessions and police courts are deemed inferior courts of record, within the section of the Constitution which provides for the removal of justices of the peace and judges, *or justices of* inferior courts not of record, and their clerks, by

such county, city or State courts as are designated by law; but for no other purpose. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

People ex rel. Kenny v. Cornell (1894), 57 St. Rep. 844, 6 Misc. 568, 27 N. Y. Supp. 859; Hirshkind v. Priv. Coach. B. & C. Assn. (1895), 67 St. Rep. 324, 33 N. Y. Supp. 618; Estes et al v. Dean (1896), 71 St. Rep. 678, 36 N. Y. Supp. 747; People ex rel. Dunnigan v. Webster (1895), 14 Misc. 619, 11 Crim. Rep. 484, 36 N. Y. Supp. 745; Matter of Deuel (1906), 116 App. Div. 513, 101 N. Y. Supp. 1037; Matter of Bartholomew (1905), 106 App. Div. 371, 378, 94 N. Y. Supp. 512.

§ 11-a. Probation officer; appointment; duties; power; procedure; transfers.

1. The magistrates of the courts having original jurisdiction of criminal actions in the state, may from time to time appoint a person or persons to perform the duties of probation officer or officers as hereinafter described, within the jurisdiction of the courts of such magistrates and under the direction of such magistrates, to hold such office during the pleasure of the magistrate or magistrates making such appointment and of their successors. Such probation officer or officers may be chosen from among the officers of a society for the prevention of cruelty to children or of any charitable or benevolent institution, society or association now or hereafter duly incorporated under the laws of this state, or be reputable private citizens, male or female. The appointment of a probation officer must be made in writing and entered on the records of the court of the magistrate or magistrates making such appointment, and copies of the order of appointment must be delivered to the officer so appointed and filed with the state probation commission. Any officer or member of the police force of any city or incorporated village who may be detailed to do duty in such courts, or any constable or peace officer, may be appointed as probation officer upon the order of any magistrate as herein provided. Whenever in a city of the first class members of the police force have been appointed probation officers as hereinabove provided and are serving as probation officers under the direction of a majority of the members of a board of city magistrates, the commissioner of police upon the request of any other magistrate of such board shall detail to such other magistrate a member of the police force who may be appointed by such magistrate as a probation officer. No probation officer appointed under the provisions of this section shall receive compensation for his

services as such probation officer until allowed by proper ordinance or resolution, as hereinafter prescribed, but this shall not be construed to deprive any officer or member of the police force, or any constable or peace officer, appointed probation officer as herein provided, from receiving the salary or compensation attached to his said official employment. The board of estimate and apportionment in the city of New York and the appropriate municipal board or body of any other city or village, or the board of supervisors of any county, may in their discretion determine whether probation officers, not detailed from other branches of the public service, shall receive a salary, and if they shall so determine, they may fix the amount thereof and provide for its payment, and they may also provide for the necessary expenses of probation officers. Whenever provision is made for the payment of a salary by the appropriate municipal board or body in any city or village to a probation officer who is to be attached to a court presided over by a magistrate sitting alone, the appointment of such probation officer shall be made by that magistrate. Whenever provision is made for the payment of a salary by the appropriate municipal board or body in any city or village to a probation officer who is to serve in a court wherein several magistrates are sitting together, or in rotation, or in a court or courts wherein there is a board of magistrates, the appointment of such probation officer shall be made by all the magistrates jointly, or by a majority thereof, except that when a probation officer is to serve in a division of a court in which there is a board of magistrates the appointment shall be made by all the magistrates of such board jointly, or by a majority thereof. Whenever provision is made for the payment of a salary to a probation officer by the board of supervisors of any county, such probation officer shall be appointed by the county judge, or if there be more than one county judge, by the county judges jointly, of such county, and such probation officer shall serve in the supreme and county courts of that county, and in any other courts in the county at the request of the magistrates holding such other courts, except the courts of criminal jurisdiction of cities of the first and second class.

2. *Duties.* Every probation officer, when so directed by the court, or by a magistrate of the court, in which he is serving, shall inquire *into the antecedents*, character, and circumstances of any person or

persons accused within the jurisdiction of such court, and into the mitigating or aggravating circumstances of the offense of such person, and shall report thereon in writing to such court or magistrate. The term "probationer" shall mean a person placed on probation. It shall be the duty of every probation officer to furnish to all persons placed on probation under his supervision a statement of the period and conditions of their probation, and to instruct them concerning the same; to keep informed concerning their conduct and condition; to aid and encourage them by friendly advice and admonition, and by such other measures, not inconsistent with the conditions imposed by the court or magistrate, as may seem most suitable, to bring about improvement in their conduct and condition; to report in writing at least monthly concerning their conduct and condition to the court having jurisdiction over such probationers, or to a magistrate thereof; to keep records of their work; to keep accurate and complete accounts of all moneys collected from probationers, to give receipts therefor and to make at least monthly returns thereof; to perform such other duties in connection with such probationers as the court or magistrate may direct; and to make such reports to the state probation commission as the commission may require. Any probation officer may act as parole officer for any state penal or reformatory institution when so requested by the authorities thereof, and when requested by the county judge shall act as parole officer over persons released on parole under section nine hundred and ten.

3. *Powers.* Every probation officer may require such reports by probationers under his care as are reasonable or necessary and not inconsistent with the conditions imposed by the court or magistrate. Every probation officer shall have, as to persons placed on probation under his care, the powers of a peace officer.

4. *Methods of procedure.* When any court suspends sentence and places a defendant on probation it shall determine the conditions and period of probation, which period of probation shall not exceed, in the cases of children, their eighteenth birthday; in the case of any other defendant convicted of an offense less than a felony, two years; and in the case of any other defendant convicted of a felony, five years. The conditions of probation shall be such as the court shall in its discretion prescribe, and may include among other conditions any or several of the following: That the probationer (a) shall indulge in no unlawful, disorderly, injurious or vicious habits; (b) shall avoid places or persons of disreputable or harmful character; (c) shall report to the probation officer as directed by the court or probation officer; (d) shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; (e) shall answer any

reasonable inquiries on the part of the probation officer concerning his conduct or condition; (f) shall, if a child of compulsory school age, attend school; (g) shall, if an adult, or if a child but not required to attend school, work faithfully at suitable employment; (h) shall remain or reside within a specified place or locality; (i) shall abstain for a reasonable period from the use of alcoholic beverages, if the use of the same contributed to his offense; (j) shall pay in one or several sums a fine imposed at the time of being placed on probation; (k) shall make reparation or restitution to the aggrieved parties for actual damages or losses caused by his offense; and (l) shall support his wife or children. The court or a magistrate thereof may modify the conditions and the period of probation; may in case of violation of the probationary conditions issue a warrant for the arrest of the probationer; and may at any time discharge the probationer; and in case of violation of the probationary conditions, the court may impose any penalties which it might have imposed before placing the defendant on probation, provided that, if committed, he be committed to an institution authorized by law to receive commitments for the offense of which he was originally convicted, and of persons of his age at the time of his commitment. If a probationer without permission disappears from oversight, or departs from the jurisdiction of the court, the time during which he keeps his whereabouts hidden or remains away from the jurisdiction of the court may be added to the original period of probation.

5. *Transfers.* A court or magistrate may transfer a probationer from the supervision of one probation officer to that of another probation officer, and such transfer shall be reported by the court or magistrate to both of such probation officers and to the probationer, and a record of the transfer shall be filed with the records of the case. Whenever a probationer resides in a county other than the county in which he has been convicted and placed on probation, or whenever a probationer desires to remove to a county other than that in which he has been placed on probation, and it seems likely that such removal will promote his welfare and will not make him a menace or public charge to such other county, the court placing him on probation, or a magistrate thereof, may transfer him to a salaried probation officer of the city or county to which the probationer is to move, provided such probation officer sends the court or magistrate desiring to make such transfer a written statement that he will exercise supervision over the probationer, and provided such statement is approved in writing by the magistrate of the court to which such probation officer is attached. Such probation officer shall report concerning the conduct and condition of such probationer to the court or magistrate making the transfer. (Amended by L. 1909, ch. 482, and L. 1910, ch. 610, in effect Sept. 1, 1910.)

TITLE II.

OF THE COURT FOR THE TRIAL OF IMPEACHMENTS.

SECTION 12. Its jurisdiction.
13. Members of the court.
14. Presiding judge.
15. Clerks and officers.
16. Seal of the court.
17. Time of holding the court.
18. Oath to members of the court.
19. Adjournments, etc.
20. Compensation of members and officers of the court.

§ 12. Its jurisdiction.

The court for the trial of impeachments has power to try impeachments, when presented by the assembly, of all civil officers of the state, except justices of the peace, justices of justices' courts, police justices, and their clerks, for willful and corrupt misconduct in office.

§ 13. Members of the court.

The court is composed of the president of the senate, the senators, or a majority of them, and the judges of the court of appeals, or a majority of them, but on the trial of an impeachment against the governor, or lieutenant governor, the lieutenant governor cannot act as a member of the court. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 14. Presiding judge.

The president of the senate, or in case of his impeachment, death or absence, the chief judge of the court of appeals, or in the absence of both, such other member as the court may elect, is the presiding judge of the court.

§ 15. Clerks and officers.

The clerk and officers of the senate are the clerk and officers of the court for the trial of impeachments.

People v. Palmer (1887) 43 Hun 408, 5 Crim. Rep. 111, aff'd 109 N. Y. 413; People v. Dempsey (1884), 2 Crim. Rep. 121.

§ 16. Seal of the court.

The seal of the court for the trial of impeachments now deposited and recorded in the office of the secretary of state shall continue to be the seal of this court and must be kept in the custody of the clerk of the senate.

§ 17. Time of holding the court.

Upon the delivery of an impeachment from the assembly to the senate the president of the senate must cause the court to be summoned to meet at the capitol in the city of Albany, on a day not less than thirty nor more than sixty days from the day of the delivery of the articles of impeachment.

§ 18. Oath to members of the court.

At the time and place appointed, and before the court proceeds to act upon the impeachment, the clerk must administer to the presiding judge, and the presiding judge to each of the members of the court then present, an oath or affirmation truly and impartially to try and determine the impeachment; and no member of the court can act or vote upon the impeachment, or any question arising thereon, without having taken this oath or affirmation.

§ 19. Adjournments, etc.

The court may adjourn from time to time and hold its sessions at such places as it may determine, but no more than two sessions of the court can be held during the recess of the legislature in any one year.

§ 20. Compensation of members and officers of the court.

The writ and process of the court must be signed by the clerk and tested in the name of the president of the senate. The president of the senate and each senator are entitled to receive for their services and expenses while actually attending the court the same rate of compensation as an associate judge of the court of appeals is entitled by law to receive for his services and expenses as such judge for the same time. The other officers of the court, excepting the judges of the court of appeals, are entitled to the same compensation for their attendance thereon, and for traveling to and from the place where it is held, as is allowed them for attending a meeting of the senate, but no such compensation shall be received for attending the court during a session of the legislature.

TITLE III.

OF THE SUPREME COURT.

SECTION 22. Its jurisdiction.
24. Writ of process.
25. Habeas corpus in Supreme Court.

§ 21. [Repealed by L. 1895, ch. 880. In effect Jan. 1, 1896.]

§ 22. Its jurisdiction.

The supreme court has jurisdiction:

1. To inquire, by the intervention of a grand jury, of all crimes committed or triable in the county; but in respect of such minor crimes as courts of special sessions or police courts have exclusive jurisdiction to hear and determine, in the first instance, the jurisdiction of the supreme court attaches only after the certificate mentioned in section fifty-seven of this Code.

2. To try and determine all such crimes, and to try all persons indicted for the same.

3. To deliver the jails of the county, or city and county, according to law, of all prisoners therein.

4. To try any indictment found in any county court, or the court of general sessions of the city and county of New York, which has been sent by order of the county court or general sessions to and received of the supreme court, or which has been removed from any court into the supreme court if, in the opinion of that court, it is proper to be tried therein.

5. To exercise the same jurisdiction as a county court in a cause or proceeding transferred according to sections forty and forty-one of this Code.

6. By an order, entered in its minutes, to send any indictment found therein for a crime triable at the county court, or the court of general sessions of the city and county of New York, to such court.

7. To grant new trials in all cases tried therein.

8. To let to bail any person committed, before and after indictment found upon any criminal charge whatever.

9. To exercise the powers conferred upon it by other provisions of this Code and by special statutes. (Amended by L. 1882, ch. 360; L. 1895, ch. 880, in effect Jan. 1, 1896.)

People v. Knott (1898), 156 N. Y. 368; People v. De Puy (1906), 115 App. Div. 565, 101 N. Y. Supp. 81.

§ 23. [Repealed by L. 1895, ch. 880. In effect Jan. 1, 1896.]

§ 24. Writ of process.

A writ of process issued out of the supreme court must be tested in the name of a justice of the supreme court of the district, and may be directed by the court into any county of the state, as occasion requires. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 25. Habeas corpus in supreme court.

During the session of the supreme court in any county, no person detained in a county jail of such county upon a criminal charge, shall be removed therefrom by writ of habeas corpus, unless such a writ shall have been issued by or shall be made returnable before such court. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: County Law, L. 1892, ch. 686, § 99. The original section 25 was repealed, by L. 1895, ch. 880.

TITLE IV.

OF THE CITY COURTS.

CHAPTER I. The city courts.
II. General provisions relating to city courts.

§§ 26–30. [Repealed by L. 1895, ch. 880. In effect Jan. 1, 1896.]

CHAPTER I.

THE CITY COURTS.

SECTION 31. City courts.
32. By whom held.

§ 31. City courts.

The city courts, having original criminal jurisdiction, are the recorder's court of Utica, the recorder's court of Oswego, and the mayor's court of Hudson. Their jurisdiction in criminal matters is defined by special statutes, and continues as thus defined. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 32. By whom held.

These courts for the exercise of their criminal jurisdiction must be held by the following officers:

The city courts of Utica and Oswego by the recorders of those cities respectively;

2. The mayor's court of Hudson, by the mayor of that city.

People v. Bates (1885), 38 Hun 181.

CHAPTER II.

GENERAL PROVISIONS RELATING TO CITY COURTS.

SECTION 33. Indictments for offenses punishable with death to be sent to the supreme court.
34. Indictments for crime not punishable by death.
35. Indictments, when to be sent to city court.
36. Court continued beyond terms.

§ 33. Indictments for offenses punishable with death, etc.

When an indictment is found at a city court for a crime punishable with death, the court may send it to the next trial term of the supreme court held in the county. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 34. Indictments for crime not punishable by death.

A city court may also send an indictment found therein and remaining undetermined for a crime not punishable with death to the next trial term of the supreme court of the same county, to be determined according to law. But that court, if, in its opinion, the same is not proper to be tried therein, may remit it back to the court by which it was sent, which must proceed thereon as if it had remained there. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 35. Indictments, when to be sent to city court.

When an indictment is found in the supreme court in a county embracing any of the cities in which a city court having original criminal jurisdiction is established, for an offense committed in that city, the court in which it was found may send it to the next city court in which it is triable, which must proceed to try and determine the indictment as if it had been found therein. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

People v. Mills (1904), 178 N. Y. 284.

§ 36. Court continued beyond terms.

If the trial of a cause be commenced before the expiration of the term of a city court the court may be continued beyond the term, to the completion of the trial and the rendering of judgment on the verdict.

People v. Palmer (1887), 5 Crim. Rep. 108.

TITLE V.

OF THE COUNTY COURTS.

CHAPTER II. The county courts in counties other than New York.
III. The court of general sessions of the city and county of New York.

§§ 37–38. [Repealed by L. 1895, ch. 880. In effect Jan. 1, 1896.]

CHAPTER II.

THE COUNTY COURTS IN COUNTIES OTHER THAN NEW YORK.

SECTION 39. Jurisdiction.
40. Indictments to be sent, etc.
41. Other indictments, etc.
42. By whom held.
44. Idem.
45. When and where held; juries.
46. Jurors, how drawn.
48. Writ or process.

§ 39. Jurisdiction.

The county courts embraced in this chapter have jurisdiction:

1. To inquire by the intervention of a grand jury of all crimes committed or triable in the county; but in respect of such minor crimes, as courts of special sessions of police courts have exclusive jurisdiction to hear and determine, in the first instance, the jurisdiction of the county court attaches only after the certificate mentioned in section fifty-seven of this Code.

2. To try and determine indictments found therein or sent thereto by the supreme court or by a city court in the county for crimes not punishable with death; and the county courts of Albany, Ulster and Kings counties shall also have jurisdiction to try and determine all such indictments including those for crimes punish*able* with death.

3. To hear and determine appeals from orders of justices of

the peace under the provisions of law respecting the support of bastards.

4. To examine into the circumstances of persons committed to prison as parents of bastards, and to discharge them in the cases provided by law.

5. To try and determine complaints under the provisions of law respecting masters, apprentices and servants.

6. To review the convictions of disorderly persons actually imprisoned, and to execute the powers conferred aud duties imposed by law in relation to those persons.

7. To continue or discharge recognizances, undertakings and bonds of persons bound to keep the peace or to be of good behavior and to inquire into and determine the complaints on which they were founded.

8. To compel relatives of poor persons and committees of the estate of lunatics to support such persons and lunatics in the cases and manner prescribed by law.

9. To exercise the powers conferred by law in relation to the estates of persons absconding and leaving their families chargeable to the public.

10. To let to bail persons indicted therein for any crime triable therein as provided by law.

11. To let to bail persons committed to the prison of the county before indictment for any offense triable in the court.

12. To discharge persons who have remained in prison without indictment or trial in the cases prescribed by law.

13. To revoke licenses in the cases and mode prescribed by law.

14. To grant new trials in all cases tried therein.

15. To execute such other powers and duties as may be conferred by statute, or are now defined by special statute relating thereto. (Amended by L. 1895, ch. 880; L. 1910, ch. 588, in effect Sept. 1, 1910.)

Judge v. O'Connor (1893), 53 St. Rep. 799, 24 N. Y. Supp. 84; People v. Trumble (1883), 1 Crim. Rep. 447; People v. De Puy (1906), 115 App. Div. 565, 101 N. Y. Supp. 81; Matter of Bartholomew (1905), 106 App. Div. 871, 878, 94 N. Y. Supp. 512.

§ 40. Indictments to be sent, etc.

A county court must send every indictment there found for a crime not triable therein to the supreme court, or to a city court

having jurisdiction to try and determine the same. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 41. Other indictments, etc.

A county court may send an indictment pending therein to the supreme court, to be determined according to law, and if such indictment is remitted back without trial by the supreme court, the county court may proceed thereon.

People v. De Puy (1906), 115 App. Div. 565, 101 N. Y. Supp. 81.

§ 42. By whom held.

A county court must be held by the county judge, except in the county of Kings, where the county court is divided into two parts, which are to be held by the two county judges elected in and for said county respectively. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 43. [Repealed by L. 1895, chap. 880. In effect Jan. 1, 1896.]

§ 44. Idem.

If the county judge and special county judge, if there be one in and for that county, are both of them, for any cause incapable of action in any criminal action or proceeding pending in the county court, the court must transfer the same to the supreme court or to a city court having jurisdiction of such an action or proceeding, or may request the county judge of any other county except New York and Kings, to preside at and hold a county court in said county. But if there be a special county judge in and for that county and not incapable of acting in that criminal action or proceeding the same shall be certified to the special county judge as provided by section three hundred and forty-two of the code of civil procedure, and the special county judge shall thereupon act in such action or proceeding. (Amended by L. 1902, ch. 387. In effect April 7, 1902.)

§ 45. When and where held; juries.

A county court must be held at such times as the county judge of the county, by order, designates, and at the place where the

county courts are held for the trial of issues of fact by a jury. Such order must designate the terms at which a grand or petit jury, or both, or neither, is required to attend; and neither a grand jury nor a petit jury is required to be drawn, or summoned to attend a term thus designated to be held without a jury. The order must be published in a newspaper printed in the county, for four successive weeks previous to the time of holding the first term under such order. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

People v. Rugg (1885), 98 N. Y. 537, 8 Crim. Rep. 176; People v. Nugent (1901), 57 App. Div. 542, 67 N. Y. Supp. 1035.

§ 46. Jurors, how drawn.

If a county judge fail to designate the term at which a grand and petit jury is required to attend, the grand and petit jurors must be drawn and summoned for each term mentioned in the order mentioned in the last section.

People v. Rugg (1885), 98 N. Y. 537, 8 Crim. Rep. 177.

§ 47. [Repealed by L. 1895, ch. 880. In effect Jan. 1, 1896.]

§ 48. Writ or process.

Every writ or process issued out of a county court may be tested on any day of the term in which the court is sitting, and be made returnable on any other day of the same term, or at the next term. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 49. [Repealed by L. 1895, ch. 880. In effect Jan. 1, 1896.]

CHAPTER III.

THE COURT OF GENERAL SESSIONS IN THE CITY AND COUNTY OF NEW YORK.

SECTION 50. This court continued; proceedings now pending.
51. Its jurisdiction.
52. Division of court.
53. Parts, by whom held.
54. When held and its duration.
55. Accommodation for court and officers, etc.

§ 50. This court continued; proceedings now pending.

The court known as the court of general sessions in and for the city and county of New York, is continued, with the jurisdiction conferred by the next two sections and no other. But nothing contained in this section affects its jurisdiction of actions and proceedings now pending therein. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 51. Its jurisdiction.

The court of general sessions of the city and county of New York has jurisdiction:

1. To try, determine and punish according to law, all crimes cognizable within said city and county, including crimes punishable with death or imprisonment in the State prison for life.

2. To exercise, in cases arising in said city and county, the same powers as are conferred by this Code upon county courts in other counties;

3. To try and determine any indictment found in the supreme court in said city and county, which has been sent by order of that court to and received by the court of general sessions therein; and,

4. To exercise such powers as are now prescribed by special statute relating thereto. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

People v. Welch (1894), 74 Hun 475, 26 N. Y. Supp. 694, aff'd 141 N. Y. 266; *People v. General Sessions* (1906), 185 N. Y. 506.

§ 52. Division of court.

The court of general sessions of the city and county of New York is divided into five parts. (Amended by L. 1907, ch. 411. In effect Sept. 1, 1907.)

§ 53. Parts; by whom held.

Any one of the five parts of the court of general sessions of the city and county of New York may be held by a judge of the court of general sessions. A justice of the supreme court may also hold it. (Amended by L. 1895, ch. 880; L. 1907, ch. 411. In effect Sept. 1, 1907.)

§ 54. When held and its duration.

Each part of the court of general sessions in and for the city and county of New York must be held each month, commencing on the first Monday and continuing so long as, in the opinion of the judge sitting, the public interest requires, but three parts only are required to be held during the months of July, August and September. (Amended by L. 1907, ch. 411. In effect Sept. 1, 1907.)

§ 55. Accommodation for court and officers, etc.

The courts have the same power to direct suitable provisions to be made for their accommodation as is now possessed by the supreme court. The judges of the court of general sessions of the city and county of New York, must appoint a clerk, and not more than twelve deputy clerks, five interpreters, six stenographers, six record clerks, six chief court attendants, a warden to the regular grand jury and a warden to the additional grand jury, and such warden shall hold his office during the pleasure of said judges. (Amended by L. 1896, ch. 75; L. 1907, ch. 411; L. 1911, chs. 606, 809, in effect June 30, 1911, July 29, 1911.)

21. Unlawfully setting fire to wood or fallow land, or allowing the same to extend to lands of others, or unlawfully refusing to extinguish any fire.

22. Unlawfully or negligently cutting out, altering or defacing any mark on any logs, timber, wood or plank, floating in any waters of this state, or lying on the banks or shores of any such waters, or at any saw-mills, or on any island where the same may have drifted.

23. Unlawfully frequenting or attending a steamboat landing, railroad depot, church, banking institution, broker's office, place of public amusement, auction-room, store, auction sale at private residence, passenger car, hotel, restaurant, or at any other gathering of people.

24. Unlawfully taking and carrying away the oysters of another, lawfully planted upon the bed of a river, bay, sound or other waters within the jurisdiction of this state.

25. Removing property out of the county, with intent to prevent the same from being levied upon by execution, or secreting, assigning, conveying or otherwise disposing of property, with intent to defraud any creditor, or to prevent the property being made liable for the payment of debts, or for receiving property with such intent.

26. Driving any carriage upon a turnpike, road or highway for the purpose of running horses; or wilfully and without authority riding a bicycle upon a sidewalk or foot-path constructed, maintained, or allowed to remain for the exclusive use of pedestrians, in any street where a sidepath for bicycles is maintained outside of an incorporated city or village; or for driving or operating any automobile or motor vehicle upon any plank road, turnpike or public highway at an unlawful rate of speed. (Amended by L. 1902, ch. 249. In effect Sept. 1, 1902.)

27. Cruelty to animals or children or offenses of children under section twenty-one hundred and eighty-six of the penal law. (Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

28. Cheating at games.

29. Winning or losing at any game or play, or by any bet, as much as twenty-five dollars within twenty-four hours.

30. Selling liquors in a court-house or jail contrary to law.

31. Exposure of the person contrary to law.

32. Crimes against the provisions of existing laws for the prevention of wanton or malicious mischief.

33. When a complaint is made to or a warrant is issued by a committing magistrate, for a violation of the laws relating to excise and the regulation of taverns, inns and hotels, or for unlawfully selling or giving to any Indian spirituous liquors or intoxicating drinks.

34. Frauds on hotel, inn, tavern and boarding-house keepers.

35. All violations of the provisions of the agricultural, poor and general business laws. (Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

36. When a complaint is made to or a warrant is issued by a committing magistrate for a violation of the provisions of section forty-three or seven hundred and twenty of the penal law of the state of New York. (Added by L. 1903, ch. 92. Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

37. Such other jurisdiction as is now provided by special statute or municipal ordinance authorized by statute.

38. When a complaint is made to or a warrant is issued by a committing magistrate for any misdemeanor not included in the foregoing subdivisions of this section, if the accused shall elect to be tried by a court of special sessions, as provided by section two hundred and eleven. But this subdivision shall not apply to any misdemeanor which is or may be punishable by a fine exceeding fifty dollars, or by imprisonment exceeding six months.

39. All violations of the law regarding the junk business and requiring persons engaged in such business to procure a license. (Added by L. 1906, ch. 497. In effect Sept. 1, 1906.)

Subd. 38 was formerly subd. 37. Amended L. 1897, ch. 546. Renumbered 38 by L. 1903, ch. 92, in effect Sept. 1, 1903.

People ex rel. Borby v. Howland (1898), 155 N. Y. 278; People v. Knatt (1898), 156 N. Y. 306; People v. McCarthy (1901), 168 N. Y. 554; Steinert v. Sobey (1897), 14 App. Div. 506, 44 N. Y. Supp. 146; Washington Life Ins. Co. v. Clason (1897), 16 App. Div. 486, 45 N. Y. Supp. 27; People ex. rel. Holmes v. Lane (1900), 53 App. Div. 588, 65 N. Y. Supp. 1004; People v. McLaughin (1901), 57 App. Div. 456, 68 N. Y. Supp. 246; People v. Bates (1885), 38 Hun 181, 4 Crim. Rep. 416; Baker v. Beatty (1886), 39 Hun 477, 4 Crim. Rep. 287; Miller v. Cooper (1886), 42 Hun 197; People v. Palmer (1887), 43 Hun 405, 406; People v. McGann (1887), 43 Hun 56; People v. Cook (1887) 45 Hun 36, 37; People v. Upson (1894), 79 Hun 89, 29 N. Y. Supp. 615; People v. Cowie (1895), 88 Hun 502, 34 N. Y. Supp. 888, 69 St. Rep. 84; People v. Austin (1889), 19 St. Rep. 520, 3 N. Y. Supp. 578; People ex. rel. McGrath v. B'd of

Supervisors (1890), 28 St. Rep. 941; People v. Upton (1890), 29 St. Rep. 778, 9 N. Y. Supp. 684; People v. Gilman (1890), 34 St. Rep. 629, 12 N. Y. Supp. 40; People ex. rel. Coon v. Wood et al (1891), 35 St. Rep. 843, 12 N. Y. Supp. 436; People v. Christy (1892), 47 St. Rep. 926, 8 Crim. Rep. 482, 20 N. Y. Supp. 279; People ex. rel. O'Brien v. Woodworth (1894), 60 St. Rep. 767, 78 Hun 587, 29 N. Y. Supp. 211; People ex. rel. Knatt v. Davy (1895), 65 St. Rep. 162, 32 N. Y. Supp. 106; People v. Carter (1895), 68 St. Rep. 585, 34 N. Y. Supp. 764; In re Bray (1890), 12 N. Y. Supp. 366, 34 St. Rep. 641; People v. Hatter (1893), 22 N. Y. Supp. 689; People v. Dewey (1890), 11 N. Y. Supp. 602, 33 St. Rep. 427, aff'd 128 N. Y. 606; Rutherford v. Krause (1890), 8 Misc. 548, 24 Civ. Proc. 1, 29 N. Y. Supp. 787; Matter of Erbe (1894), 13 Misc. 407, 35 N. Y. Supp. 105; People v. Burns (1897), 19 Misc. 682, 44 N. Y. Supp. 1054; People ex. rel. Shortell v. Markell (1897), 20 Misc. 154, 45 N. Y. Supp. 816; People ex. rel. Saloom v. Whitney (1898), 24 Misc. 265, 53 N. Y. Supp. 570; People v Mulkins (1898), 25 Misc. 602, 56 N. Y. Supp. 123; People v. Daufkirch (1895), 69 St. Rep. 478, 35 N. Y. Supp. 105; People v. Huggins (1906), 110 App. Div. 613, 614, 97 N. Y. Supp. 187; Cleaveland v. Cromwell (1906), 110 App. Div. 82, 87, 96 N. Y. Supp. 475; McCarg v. Burr (1905), 106 App. Div. 275, 277, 94 N. Y. Supp. 675; Matter of Jones (1905), 101 App. Div. 58, 92 N. Y. Supp. 275; People v. Angie (1902), 74 App. Div. 539, 77 N. Y. Supp. 832; People v. Patterson (1902), 38 Misc. 79, 80, 77 N. Y. Supp. 155; People ex. rel. Warren v. Brady (1902), 37 Misc. 126, 128, 74 N. Y. Supp. 973; People v. Johnston (1906), 112 App. Div. 813, 99 N. Y. Supp. 411; People v. Booth (1906), 52 Misc. 341, 102 N. Y. Supp. 62; McCarg v. Burr (1906), 186 N. Y. 469, aff'g 106 App. Div. 275, 281, 94 N. Y. Supp. 675; People ex. rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 857, 114 N. Y. Supp. 883, rev'd 195 N. Y. 190; People v. Vert (1909), 134 App. Div. 790.

§ 56-a. Exclusive jurisdiction.

Courts of special sessions shall have exclusive jurisdiction to try and determine, according to law, all complaints for violations of sections twelve hundred and twenty-one, nineteen hundred and twelve and nineteen hundred and thirteen of the penal law. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1896, ch. 112, § 35, subd. 2, pt., as amended by L. 1897, ch. 312, § 25.

§ 57. Exclusive jurisdiction.

Upon filing with the magistrate before whom is pending a charge for any of the crimes specified in section fifty-six, a certificate of the county judge of the county, or of any justice of the supreme court, that it is reasonable that such charge be prosecuted by indictment, and fixing the sum in which the defendant shall give bail to appear before the grand jury; and upon the defendant giving bail as specified in the certificate, all proceedings before the justice shall be stayed; and he shall, within five days thereafter, *make a* return to the district attorney of the county of all pro*ceedings had before him* upon the charge, together with such cer-

tificate and the undertaking given by the defendant thereon, and the district attorney shall present such charge to the grand jury; provided, however, that no such certificate shall be given except upon at least three days' notice to the complainant or to the district attorney of the county of the time and place for the application therefor.

People v. Knatt (1898), 156 N. Y. 306, 18 Crim. Rep. 92; People v. Freileweh (1896), 11 App. Div. 409, 42 N. Y. Supp. 373; People v. Barry (1897), 16 App. Div. 464, 44 N. Y. Supp. 913; People v. McGann (1887), 43 Hun 56, 57, 58; People v. Palmer (1887), 43 Hun 405; People v. Cowie (1895), 88 Hun. 501, 34 N. Y. Supp. 888, 69 St. Rep. 84; People v. Austin (1889), 19 St. Rep. 520, 3 N. Y. Supp. 578; People ex. rel. Coon v. Wood et al (1891), 35 St. Rep. 843, 12 N. Y. Supp. 436; People v. Christy (1892), 47 St. Rep. 926, 8 Crim. Rep. 485, 20 N. Y. Supp. 278; People v. Dewey (1890), 11 N. Y. Supp. 602; People v. Wilber (1891), 15 N. Y. Supp. 436, 39 St. Rep. 743; People v. Hulett (1891), 15 N. Y. Supp. 631; People v. Parker (1893), 23 N. Y. Supp. 704; People ex. rel. Knowlton v. Sadler (1884), 2 Crim. Rep. 440; People v. Mulkins (1898), 25 Misc. 602, 54 N. Y. Supp. 414; Cleaveland v. Cromwell (1905), 110 App. Div. 82, 87, 96 N. Y. Supp. 475; People v. Booth (1907), 52 Misc. 341, 102 N. Y. Supp. 62; People ex. rel. Warren v. Brady (1902), 37 Misc. 126, 128, 74 N. Y. Supp. 973; People ex. rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 855, 114 N. Y. Supp. 833, rev'd 195 N. Y. 190; People ex. rel. Bedell v. Foster (1909), 132 App. Div. 116, 116 N. Y. Supp. 530; People v. Loomis (1909), 65 Misc. 156; People v. Vert (1909), 134 App. Div. 790.

§ 58. Limitation.

When a person is brought before a magistrate charged with the commission of any of the crimes mentioned in section fifty-six, and asks that his case be presented to the grand jury, the proceedings shall be adjourned for not less than five nor more than ten days, and if on or before the adjourned day the certificate mentioned in section fifty-seven is not filed with the magistrate before whom the charge is pending, and bail given by the defendant as therein prescribed, the magistrate shall proceed with the trial, and when the defendant is brought before the magistrate, it shall be the duty of the magistrate to inform him of his rights under section fifty-seven and this section.

People v. Freileweh (1896), 11 App. Div. 409, 76 St. Rep. 373, 42 N. Y. Supp. 373; People v. Barry (1897), 16 App. Div. 464, 12 Crim. Rep. 357, 78 St. Rep. 913, 44 N. Y. Supp. 913; People v. McGann (1887), 43 Hun 56, 57, 58; People v. Cowie (1895), 88 Hun 502, 34 N. Y. Supp. 888, 69 St. Rep. 85; People v. Starks (1888), 17 St. Rep. 234, 1 N. Y. Supp. 721; People v. Wilber (1891), 15 N. Y. Supp. 437; People v. Hulett (1891), 15 N. Y. Supp. 631; People v. Parker (1893), 23 N. Y. Supp. 704; People v. Barry (1897), 44 N. Y. Supp. 973; People v. Burleigh (1883), 1 Crim. Rep. 524; People v. Mulkins (1898), 25 Misc. 602, 54

N. Y. Supp. 414; People ex. rel. Warren v. Brady (1902), 37 Misc. 126, 128, 74 N. Y. Supp. 973; People ex. rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 855, 114 N. Y. Supp. 833, rev'd 195 N. Y. 190; People v. Loomis (1909), 65 Misc. 156.

§ 59. Trial and punishment of certain crimes.

A court of special sessions having jurisdiction in the place where any of the crimes specified in section fifty-six is committed has jurisdiction to try and determine a complaint for such crime, and to impose the punishment prescribed upon conviction, unless the defendant obtains the certificate and gives the bail mentioned in section fifty-seven.

People v. McGann (1887), 43 Hun 56; People v. Austin (1889), 19 St. Rep. 520, 3 N. Y. Supp. 578; People ex. rel. Coon v. Wood (1891), 35 St. Rep. 843, 12 N. Y. Supp. 486; People v. Cowie (1895), 69 St. Rep. 478, 84 N. Y. Supp. 888; Matter of Erbe (1894), 13 Misc. 407, 35 N. Y. Supp. 102.

§ 60. Special sessions in Brooklyn.

Subject to the power of removal provided for by sections fifty-seven and fifty-eight of this code, the courts of special sessions in the city of Brooklyn shall, in the first instance, have jurisdiction except in case of public officers and conspiracy, to try and determine all complaints made before them, or before a police magistrate, or justice of the peace for misdemeanor committed in said city, where the term of imprisonment does not exceed one year, with or without fine, and to impose the same punishment as is authorized by statute in like cases to be inflicted by the county court of the county of Kings. Where any jury is required for the trial of any crime or misdemeanor in courts of special sessions in the city of Brooklyn, the said courts shall have power to summons as many jurors as the court may deem necessary for the trial of such action or misdemeanor. The said court of special sessions in the city of Brooklyn shall have power to take bail in a reasonable amount for all misdemeanors, and shall have power to take undertakings in bail either with or without the defendant thereon in the discretion of the said courts. All fines imposed by the said courts of special sessions in the city of Brooklyn, or by police magistrates in said city, upon defendants convicted in said courts or by such magistrates, of crimes, misdemeanors or violations of any city ordinance of the city of *Brooklyn, which are* paid by such defendants so convicted to the

sheriff of the county of Kings or to the keeper of the penitentiary of said city, shall be paid monthly by the said sheriff or said keeper to the respective clerks of the courts in which the said fines were imposed; provided, however, that the said sheriff or keeper of the penitentiary of Kings county may, in his discretion, pay all of such fines so paid to them, or either of them, directly to the city treasurer of the city of Brooklyn. In an examination held in any criminal proceeding by a police magistrate in the city of Brooklyn, the testimony of each witness may, in the discretion of the magistrate, be taken as a deposition by the official stenographer of the court in which said magistrate holds such examination. Such minutes of the testimony when so taken, and when certified by the stenographer and by the magistrate who held such examination, shall both, with reference to such examination, and in all procedure in connection with such examination provided for by any section of this code not inconsistent herewith, be regarded as actually taken down in writing by such magistrate and subscribed by the witness or witnesses at such examination. (Amended by L. 1896, ch. 92. In effect March 11, 1896.)

§ 61. Special sessions in Oswego.

The court of special sessions in the city of Oswego, where held by the recorder, has also jurisdiction over all cases of offenses, crimes against public decency, selling unwholesome provisions, cheats, breaches of peace, disobeying the commands of officers to render assistance in criminal cases, obstructing officers in the discharge of their duties, adulterating distilled spirits, not delivering marked property, defacing marks, or putting false marks on floating timber, all violations against the laws and ordinances of or applicable to the city, when such violation is a misdemeanor, and all attempts to commit any crimes herein named or referred to when such attempt is a misdemeanor.

§ 62. By whom held.

Unless provision is otherwise made by law, a court of special sessions must be held by one justice of the peace of the town or city in which the same is held, and sections two hundred and ninety-three, two hundred and ninety-four, two hundred and ninety-five, three hundred and ten, three hundred and thirty-two,

three hundred and thirty-three, three hundred and thirty-four, three hundred and thirty-five, three hundred and thirty-six, three hundred and thirty-seven, three hundred and thirty-eight, three hundred and thirty-nine, three hundred and forty, three hundred and forty-one, three hundred and forty-two, and three hundred and fifty-nine to four hundred and fifty, both inclusive, shall apply as far as may be to proceedings in all courts of special sessions or police courts.

People ex. rel. Burby v. Howland (1898), 155 N. Y. 278; People v. Polhamus (1896), 8 App. Div. 136, 40 N. Y. Supp. 491; People v. Bates (1885), 38 Hun 181; Matter of Bray (1890), 34 St. Rep. 642, 12 N. Y. Supp. 366.

§ 63. Recorder of a city to hold court.

A recorder of a city has power to hold a court of special sessions therein.

People ex. rel. Fitzpatrick v. French (1884), 32 Hun 116; Miller v. Cooper (1886), 42 Hun 197.

CHAPTER II.

THE SPECIAL SESSIONS IN THE CITY OF NEW YORK.

SECTION 64. Jurisdiction.
64a. Exclusive jurisdiction.
65. Seal.
66. Term of office.
67. Court, when held.

§ 64. Jurisdiction.

The courts of special sessions in the city of New York, within their respective divisions, have jurisdiction:

1. Such as is conferred on them by the greater New York charter and other existing statutes.

2. To send process and other mandates in any matter of which they have jurisdiction into any county of the state, for service or execution, in like manner and with the same force and effect as similar process or mandates of the court of general sessions of the city and county of New York, and of county courts in counties other than New York, as provided by the code; and particularly, to compel the attendance of witnesses, to order the conditional examination of witnesses, to issue commissions for the examination of witnesses without the state, to inquire into the insanity of a defendant and to dismiss the prosecution of an action in like manner as the prosecution of actions by indictment may be dismissed, conformably to the provisions of title twelve of part four of this code. (Amended by L. 1904, ch. 563. In effect Sept. 1, 1904.)

People ex rel. Fellows v. Hogan (1890), 123 N. Y. 220, 55 Hun 394, 8 N. Y. Supp. 451, 7 Crim. Rep. 479; Matter of Bray (1890), 34 St. Rep. 642, 12 N. Y. Supp. 367; Matter of McMahon (1883), 1 Crim. Rep. 62; People ex rel. Burns v. Flaherty (1907), 119 App. Div. 463, 104 N. Y. Supp. 178; People v. Patterson (1902), 38 Misc. 79, 81, 77 N. Y. Supp. 155.

§ 64-a. Exclusive jurisdiction.

Courts of special sessions shall have exclusive jurisdiction to try and determine, according to law, all complaints for violations of sections twelve hundred and twenty-one, nineteen hundred and twelve and nineteen hundred and thirteen of the penal law. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1896, ch. 112, § 35, subd. 2, pt., as amended by L. 1887, ch. 312, § 25.

§ 65. Seal.

The seal heretofore provided for the courts of special sessions in said city on which is engraved the arms of the state and the words "court of special sessions of the city of New York" with the number of the division of the court, shall continue to be the seal of the court, and all process issued by said court shall be sealed with the said seal and signed by the clerk of said court. (Amended by L. 1904, ch. 563. In effect Sept. 1, 1904.)

§ 66. Term of office.

The term of office of the clerk and deputy clerk of the court of special sessions in the city and county of New York is the same as the term of office of the police justices of that city.

Bevins v. Albro (1895), 67 St. Rep. 783, 33 N. Y. Supp. 1079; People ex rel. Knatt v. Davy (1898), 32 N. Y. Supp. 106.

§ 67. Court, when held.

The court of special sessions in the city and county of New York, may be held as often and at such times as the justices thereof may think expedient.

People v. Davy (1893), 32 N. Y. Supp. 783.

CHAPTER III.

THE SPECIAL SESSIONS IN THE CITY OF ALBANY.

SECTION 68. Jurisdiction.
68a. Exclusive jurisdiction.
69. By whom held.
70. Inability of judge.
71. Officers to attend.
72. Clerk.
73. Court, when and where held.

§ 68. Jurisdiction.

The court of special sessions in the city of Albany has jurisdiction:

1. To try and determine all cases of petit larceny charged as a first offense, and all misdemeanors, not being infamous crimes, committed within the city, when a person accused of such crime or misdemeanor demands to be tried before such court of special sessions held by the recorder of said city, instead of before a *police justice;*

2. To take recognizances, to appear before the court at a succeeding term from persons charged with a crime or misdemeanor, triable therein;

3. To impose and enforce sentence of fine or imprisonment, or both, in the discretion of the court, in all cases within its jurisdiction, upon conviction, or to the same extent as the county court of the county of Albany could do in like cases;

4. To punish a contempt of court in the same manner and to the same extent as the supreme court could do in like cases.

5. In cases where a jury trial is demanded by a defendant, to draw from the jury box containing the names of jurors who reside in the city of Albany such number of names as the recorder or county judge may direct, and to require the sheriff of the county to summon the persons so drawn to appear at the time designated for trial, to impanel a jury of twelve men, to require the attendance of additional jurors and to punish a juror or witness neglecting to appear, in the same manner and to the same extent as the supreme court could do in like cases.

6. On motion of the district attorney, to issue a warrant for the arrest of a person who neglects to appear agreeably to the requirements of a recognizance to appear thereat, commanding the officer executing the same to bring the party forthwith before the court, if in session, otherwise to commit him to the common jail of the county, there to remain until delivered by due course of law. (Amended by L. 1900, ch. 645. In effect April 24, 1900.)

People v. Parr (1886), 42 Hun 316, 4 Crim. Rep. 545; Matter of Bray (1890), 12 N. Y. Supp. 367, 34 St. Rep. 641.

§ 68-a. Exclusive jurisdiction.

Courts of special sessions shall have exclusive jurisdiction to try and determine, according to law, all complaints for violations of sections twelve hundred and twenty-one, nineteen hundred and twelve and nineteen hundred and thirteen of the penal law. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1896, ch. 112, § 35, subd. 2, pt., as amended by L. 1897, ch. 312, § 25.

§ 69. By whom held.

Upon charges for offenses triable by this court, the police magistrate or any other magistrate in the city hearing the same, shall, if offered, *take recognizances* in the cases provided by law

returnable at the court of special sessions; and all such recognizances as shall have been so taken shall be returned to and filed with the district attorney of the county of Albany. If no such recognizance be offered, the magistrate or magistrates shall commit the defendant to the common jail of the county of Albany until he shall be thence delivered in due course of law, and the trial of such person shall be had before the court of special sessions, except that where a police justice or other magistrate in this city has jurisdiction, the defendant may elect to be tried before such police justice or other magistrate.

§ 70. Inability of judge.

Whenever a person is brought before a police justice or other magistrate of the city, charged with any of the following crimes, viz.: Petit larceny charged as a first offense, offenses against the laws relating to excise and the regulation of taverns, inns and hotels, offenses being misdemeanors against the laws relating to gaming, assaults upon, and interference with a public officer in the discharge of his duty, and it shall appear to the magistrate that the crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must order him to be held to answer the charge before the court of special sessions.

§ 71. Officers to attend.

The court of special sessions in the city of Albany must be held by the recorder of the city, with or without one or more of the justices of the peace to be associated with him. In case of the absence or inability of the recorder to act, the county judge of the county of Albany must act in his place. If the recorder and county judge are both unable, by reason of absence or other cause, to hold the court, the clerk must adjourn the court to the next following Tuesday, and continue such adjournments until the recorder or county judge attends. Not more than two officers shall be designated or appointed by the sheriff or other authority to attend the court of special sessions of the city of Albany, unless the court shall, by an order entered in its minutes, require the attendance of a greater number.

Knapp v. Valentine (1895), 67 St. Rep. 582, 33 N. Y. Supp. 712.

§ 72. Clerk.

The county clerk of Albany county is clerk of the court of special sessions of the city of Albany, and must attend the same in person or by deputy.

People v. Van Houten (1895), 69 St. Rep. 269, 35 N. Y. Supp. 186.

§ 73. Court, when and where held.

The court of special sessions of the city of Albany must be held at the city hall in the city of Albany on Tuesday of each week, and may be held and continued for such length of time as it deems proper.

CHAPTER IV.

THE POLICE COURTS.

SECTION 74. Jurisdiction.
75–77. Repealed.
78. Compensation of justice.

§ 74. Jurisdiction.

Police justices have such jurisdiction, and such only, as is specially conferred upon them by statute. The courts held by police justices are called police courts, and courts of special sessions are also called police courts, and are so designated in different parts of the Code.

Kolyem v. B'way & 7th Ave. R. R. Co. (1892), 48 St. Rep. 657, 20 N. Y. Supp. 701; People v. Van Houten (1895), 69 St. Rep. 269, 35 N. Y. Supp. 187, 13 Misc. 609; Matter of McMahon (1883), 15 Crim. Rep. 62; People v. Trumble (1883), 1 Crim. Rep. 446, 29 Hun 205; People ex. rel. Shortell v. Markell (1897), 20 Misc. 154, 45 N. Y. Supp. 904; Matter of Motley (1898), 24 Misc. 489, 53 N. Y. Supp. 878; Golden v. Metr. El. Ry. Co. (1892), 1 Misc. 142, 20 N. Y. Supp. 630; McNamara v. Wallace (1904), 97 App. Div. 78, 89 N. Y. Supp. 591; People v. Patterson (1898), 38 Misc. 79, 81, 77 N. Y. Supp. 155; People ex. rel. Cosgriff v. Craig (1909), 129 App. Div. 851, 857, 114 N. Y. Supp. 883, rev'd 195 N. Y. 190.

§§ 75–77. [Repealed by 1897, ch. 414.]

§ 78. Compensation of justice.

A police justice cannot retain to his own use any costs or fees, but may receive for his services an annual salary, to be fixed in villages by the board of trustees, and in cities by the common council, except where the same is otherwise fixed by law; and such salary shall not be increased or decreased during his term of office.

PART II.

OF THE PREVENTION OF CRIME.

TITLE I. OF LAWFUL RESISTANCE.
II. OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

TITLE I.

OF LAWFUL RESISTANCE.

CHAPTER I. General provisions respecting lawful resistance.
II. Resistance by the party about to be injured.
III. Resistance by other parties.

CHAPTER I.

GENERAL PROVISIONS RESPECTING LAWFUL RESISTANCE.

SECTION 79. Lawful resistance; by whom made.

§ 79. Lawful resistance; by whom made.

Lawful resistance to the commission of a crime may be made:

1. By the party about to be injured;
2. By other parties.

CHAPTER II.

RESISTANCE BY THE PARTY ABOUT TO BE INJURED.

SECTION 80. In what cases; to what extent.

§ 80. In what cases; to what extent.

Resistance sufficient to prevent the crime may be made by the party about to be injured:

1. To prevent a crime against his person;

2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

CHAPTER III.

RESISTANCE BY OTHER PARTIES.

SECTION 81. In what cases.

§ 81. In what cases.

Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the injury.

TITLE II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

CHAPTER I. Intervention of public officers in general.
II. Security to keep the peace.
III. Police in cities and villages, and their attendance at exposed places.
IV. Prevention and suppression of riots.

CHAPTER I.

INTERVENTION OF PUBLIC OFFICERS IN GENERAL.

SECTION 82. In what cases.
83. Persons acting in their aid, justified.

§ 82. In what cases.

Crimes may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace;

2. By forming a police in cities and villages, and by requiring their attendance in exposed places;

3. By suppressing riots.

People v. Mills (1904), 178 N. Y. 293.

§ 83. Persons acting in their aid, justified.

When the officers of justice are authorized to act in the prevention of crime, other persons who, by their command, act in their aid, are justified in so doing.

CHAPTER II.

SECURITY TO KEEP THE PEACE.

SECTION 84. Information of threatened crime.
85. Examination of complainant and witnesses.
86. Warrant of arrest.
87. Proceedings, on complaint being controverted.
88. Person complained of, when to be discharged.
89. Security to keep the peace, when required.
90. Effect of giving or refusing to give security.
91. Person committed for not giving security, how discharged.
92. Undertaking, to be transmitted to county court.
93. Security, when required, for assault, etc., in presence of a court or magistrate.
94. Appearance of party bound, upon his undertaking.
95. Person bound, may be discharged, if complainant does not appear.
96. Proceedings in sessions, on appearance of both parties.
97. Undertaking, when broken.
98. Undertaking, when and how to be prosecuted.
98a. Security to keep the peace by convicts.
99. Security for the peace not required, except according to this chapter.

§ 84. Information of threatened crime.

An information may be laid before any magistrate that a person has threatened to commit a crime against the person or property of another.

Wright v. Church (1888), 110 N. Y. 468; Hewitt v. Newburger (1894), 141 N. Y. 538; Palmer v. Palmer (1896), 8 App. Div. 385, 40 N. Y. Supp. 829; People v. Boyle (1884), 2 Crim. Rep. 54.

§ 85. Examination of complainant and witnesses.

When the information is laid before a magistrate, he must examine on oath the complainant and any witnesses he may produce, and must reduce their examination to writing, and cause them to be subscribed by the parties making them.

§ 86. Warrant of arrest.

If it appear from such examinations that there is just reason *to fear the commission* of the crime threatened, by the person

complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal or policeman of the city or town, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

§ 87. Proceedings, on complaint being controverted.

When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

Westbrook v. New York Sun Assn. (1901), 58 App. Div. 564, 69 N. Y. Supp. 66.

§ 88. Person complained of, when to be discharged.

If it appear that there is no just reason to fear the commission of the crime alleged to have been threatened, the person complained of must be discharged.

Palmer v. Palmer (1896), 8 App. Div. 335, 40 N. Y. Supp. 829; People v. Boyle (1884), 2 Crim. Rep. 55.

§ 89. Security to keep the peace; when required.

If, however, there be just reason to fear the commission of the crime, the person complained of may be required to enter into an undertaking, in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next county court of the county held for the trial of indictments, and in the meantime to keep the peace towards the people of this state, and particularly towards the complainant.

Walker v. People (1881), 1 Crim. Rep. 7; People v. Cutler (1883), 1 Crim. Rep. 179; People v. Boyle (1884), 2 Crim. Rep. 54; People ex. rel. Day v. Reese 1898), 24 Misc. 530, 53 N. Y. Supp. 965.

§ 90. Effect of giving or refusing to give security.

If the undertaking required by the last section be given, the party complained of must be discharged. If it is not given, the magistrate must commit him to prison, specifying in the warrant the cause of commitment, the amount of security required, and the omission to give the same.

Wright v. Church (1888), 110 N. Y. 463; People ex. rel. Day v. Reese (1898), 24 Misc. 530, 53 N. Y. Supp. 965; People v. Mills (1904), 178 N. Y. 293.

§ 91. Person committed for not giving security; how discharged.

If the person complained of be committed for not giving security, he may be discharged by any two justices of the peace of the county, or police or special justices of the city, upon giving the security.

People ex. rel. Day v. Reese (1898), 24 Misc. 530, 53 N. Y. Supp. 965.

§ 92. Undertaking, to be transmitted to county court.

An undertaking given as provided in section eighty-nine, must be transmitted by the magistrate to the next term of the county court of the county.

§ 93. Security, when required, for assault, etc., in presence of a court or magistrate.

A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit a crime against his person or property, or who contends with another in angry words, may be thereupon ordered by the court or magistrate to give security as provided in section eighty-nine, or if he refuses to do so, may be committed as provided in section ninety.

§ 94. Appearance of party bound, etc.

A person who has entered into an undertaking to keep the peace, must appear on the first day of the next term of the county court of the county. If he do not, the court may forfeit his undertaking, and order it to be prosecuted, unless his default be excused.

§ 95. Person bound, may be discharged if complainant does not appear.

If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shown.

§ 96. Proceedings in sessions, on appearance of both parties.

If both parties appear, the court may hear their proofs and allegations, and may either discharge the undertaking, or require a new one, for a time not exceeding one year.

§ 97. Undertaking, when broken.

An undertaking to keep the peace is broken, on the failure of the person complained of to appear at the county court as provided in section ninety-four, or upon his being convicted of any crimes involving a breach of the peace.

§ 98. Undertaking, when and how to be prosecuted.

Upon the district attorney producing evidence of such conviction to the county court to which the undertaking is returned, that court must order the undertaking to be prosecuted; and the district attorney must thereupon commence an action upon it in the name of the people of this State.

§ 98-a. Security to keep the peace by convicts.

Every court of criminal jurisdiction, before which any person shall be convicted of any criminal offense, not punishable with death or imprisonment in a state prison, shall have power, in addition to such sentence as may be prescribed or authorized by law, to require such person to give security to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, or to stand committed until such security be given. But this section shall not extend to convictions for writing or publishing any libel; nor shall any such security be hereafter required by any court, upon any complaint, prosecution or conviction, for any such writing or publishing. No recognizance given under this section, shall be deemed to be broken, unless the principal therein be convicted of some offense amounting in judgment of law, to a breach of such recognizance. The same proceedings for the collection of such recognizance when forfeited, shall be had as are prescribed in the preceding sections of this chapter, in relation to recognizances to keep the peace. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 738, §§ 1–3.

§ 99. Security for the peace not required except according to this chapter.

Security to keep the peace or be of good behavior, cannot be required, except as prescribed in this chapter.

Matter *of McMahon (1888), 1* Crim. Rep. 60; People v. Boyle (1884), 2 Crim. *Rep. 54.*

CHAPTER III.

POLICE IN CITIES AND VILLAGES, AND THEIR ATTENDANCE AT EXPOSED PLACES.

SECTION 100. Organization and regulation of the police.
101. Force to preserve the peace, at public meetings, when and how ordered.

§ 100. Organization and regulation of the police.

The organization and regulation of the police in the cities and villages of this state are governed by special statutes.

§ 101. Force to preserve the peace, at public meetings, when and how ordered.

The mayor or other officer having the direction of the police in a city or village, must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

CHAPTER IV.

PREVENTION AND SUPPRESSION OF RIOTS.

SECTION 102. Powers of sheriff or other officer, in overcoming resistance to process.
103. His duty to certify to court the names of resisters and their abettors.
104. Duty of a person commanded to aid the officer.
105. When governor to order out a military force, to aid in executing process.
106. Magistrates and officers to command rioters to disperse.
107. To arrest rioters, if they do not disperse.
108. Consequences of refusal to aid the magistrates or officers.
109. Consequences of neglect or refusal of a magistrate or officer to act.
110. Proceedings, if rioters do not disperse.
111. Officers who may order out the military.
112. Commanding officer and troops to obey the order.
113. Armed force to obey orders.
114. Conduct of the troops.
115. Governor may, in certain cases, proclaim a county in a state of insurrection.
116. May call out the militia.
117. May revoke the proclamation.

§ 102. Powers of sheriff or other officer in overcoming resistance to process.

When a sheriff or other public officer, authorized to execute process, has reason to apprehend that resistance is about to be made to the execution of the process, he may command as many male inhabitants of his county as he thinks proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

§ 103. His duty to certify to court the names of resisters and their abettors.

The officer must certify to the court from which the process issued the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for contempt.

§ 104. Duty of a person commanded to aid the officer.

Every person commanded by a public officer to assist him in the execution of process, as provided in section one hundred and two, who, without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

§ 105. When governor to order out a military force to aid in executing process.

If it appear to the governor that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, he must, on the application of the sheriff, order such a military force from any other country or counties as is necessary.

People v. Abeel (1904), 45 Misc. 86, 94, 91 N. Y. Supp. 699.

§ 106. Magistrates and officers to command rioters to disperse.

When persons, to the number of five or more, armed with dangerous weapons, or to the number of ten or more, whether armed or not, are unlawfully or riotously assembled in a city, village or town, the sheriff of the county and his under sheriff and deputies, the mayor and aldermen of the city, or the supervisor of the town, or president or chief executive officer of the village, and the justices of the peace or the police justices of the city, village or town, or such of them as can forthwith be collected, must go among the persons assembled and command them, in the name of the people of the state, immediately to disperse.

§ 107. To arrest rioters, if they do not disperse.

If the persons assembled do not immediately disperse, the magistrates and officers must arrest them, or cause them to be arrested, that they may be punished according to law; and for that purpose, may command the aid of all persons present or within the county.

§ 108. Consequences of refusal to aid the magistrates or officers.

If a person so commanded to aid the magistrates or officers, neglects to do so, he is deemed one of the rioters, and is punishable *accordingly.*

§ 109. Consequences of neglect or refusal of a magistrate or officer to act.

If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section one hundred and six, neglects to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

§ 110. Proceedings, if rioters do not disperse.

If the persons assembled, and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in section one hundred and six, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary, to disperse the assembly and arrest the offenders.

§ 111. Officers who may order out the military.

When there is an unlawful or riotous assembly, with intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the state, and the fact is made to appear to the governor, or to a judge of the supreme court, or to a county judge, or to the sheriff of the county, or to the mayor, recorder or city judge of a city, either of those officers may issue an order directed to the commanding officer of a division, brigade, regiment, battalion or company, to order his command, or any part of it (describing the kind and number of troops), to appear at a specified time and place to aid the civil authorities in suppressing violence and enforcing the law.

§ 112. Commanding officer and troops to obey the order.

The commanding officer, to whom the order is given, must forthwith obey it; and the troops required must appear at the time and place appointed, armed and equipped with ammunition as for inspection, and render such aid.

§ 113. Armed force to obey orders.

When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders

in relation thereto, of either of the officers mentioned in section one hundred and eleven.

§ 114. Conduct of the troops.

Every endeavor must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

§ 115. Governor may, in certain cases, proclaim a county in a state of insurrection.

When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county, by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the district attorney or county judge of the county, by proclamation to be published in the state paper, and in such papers in the county as he may direct, declare the county to be in a state of insurrection.

§ 116. After proclamation.

After the proclamation mentioned in the last section, the governor may order into the service of the state such number and description of volunteer or uniform companies, or other militia of the state, as he deems necessary, to serve for such term, and under the command of such officer or officers as he may direct.

§ 117. May revoke the proclamation.

The governor, when he thinks proper, may revoke the proclamation authorized by section one hundred and fifteen, or declare that it shall cease, at the time and in the manner directed by him.

Tupper v. Morin (1890), 25 Abb. N. C. 402, 12 N. Y. Supp. 481.

PART III.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS, BY IMPEACHMENT OR OTHERWISE.

TITLE I. OF IMPEACHMENTS.
II. OF THE REMOVAL OF JUSTICES OF THE PEACE, POLICE JUSTICES, AND JUSTICES OF JUSTICES' COURTS AND THEIR CLERKS.

TITLE I.

OF IMPEACHMENTS.

SECTION 118. Impeachment to be delivered to president of the senate.
119. Copy of impeachment served on defendant.
120. Service, how made.
121. Proceedings, if defendant do not appear.
122. Defendant may object to deficiency of, or deny impeachment.
123. Form of objection or denial.
124. Proceedings thereon.
125. Two-thirds necessary to conviction.
126. Judgment on conviction, how pronounced.
127. Adoption of resolution.
128. Nature of the judgment.
129. Officer, when impeached, disqualified to act until acquitted.
130. Presiding officer, when president of the senate is impeached.
131. Impeachment, not a bar to indictment.

§ 118. Impeachment to be delivered to president of the senate.

When an officer of the state is impeached by the assembly, the articles of impeachment must be delivered to the president of the senate.

§ 119. Copy of impeachment served on defendant.

The president of the senate must thereupon cause a copy of the

articles of impeachment, with a notice to appear and answer the same, at the time and place appointed for the meeting of the court to be served on the defendant not less than twenty days before the day fixed for the meeting of the court.

§ 120. Service, how made.

The service must be upon the defendant personally, or if he cannot, upon diligent inquiry, be found in the state, the court upon proof of that fact, may order publication to be made in such manner as it deems proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

§ 121. Proceedings, if defendant do not appear.

If the defendant do not appear, the court, upon proof of service or publication as provided in the last two sections, may of its own motion, or for cause shown, assign another day or place for hearing the impeachment; or may then, or at any other time which it may appoint, proceed in the absence of the defendant, to trial and judgment.

§ 122. Defendant may object to sufficiency of, or deny impeachment.

When the defendant appears, he must answer the articles of impeachment; which he may do, either by objecting to their sufficiency, or that of any articles therein, or by denying the truth of the same.

§ 123. Form of objection or denial.

If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form; it being sufficient, if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral, and without oath, and must be entered upon the minutes.

§ 124. Proceedings thereon.

If an objection to the sufficiency of the impeachment be not

sustained by a majority of the members of the court who heard the argument, the defendant must forthwith answer the articles of impeachment. If he plead guilty, or refuse to plead, the court must render judgment of conviction against him. If he deny the matters charged the court must, at such time as it may appoint, proceed to try the impeachment, and may adjourn the trial from time to time until concluded.

§ 125. Two-thirds necessary to conviction.

The defendant cannot be convicted on an impeachment, without the concurrence of two-thirds of the members present during the trial; and if such two-thirds do not concur in a conviction, the defendant must be declared acquitted.

§ 126. Judgment on conviction, how pronounced.

After conviction the court must immediately, or at such other time as it may appoint, pronounce judgment, in the form of a resolution, entered upon the minutes of the court. The vote upon the passage thereof must be taken by yeas and nays, and must also be entered upon the minutes.

§ 127. Adoption of resolution.

On the adoption of the resolution by a majority of the members present, who voted on the question of acquittal or conviction, it becomes the judgment of the court.

§ 128. Nature of the judgment.

Upon conviction, the judgment must be either:

1. That the defendant be removed from office; or

2. That he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of profit, trust or honor whatever under this state.

§ 129. Officer, when impeached, disqualified to act until acquitted.

No officer shall exercise his office, after articles of impeachment against him shall have been delivered to the senate, until he is acquitted.

§ 130. Presiding officer, when president of the senate is impeached.

If the president of the senate be impeached, notice of the impeachment must be immediately given to the senate by the assembly, that another president may be chosen.

§ 131. Impeachment not a bar to indictment.

If the offense for which the defendant is impeached be a crime, the prosecution thereof is not barred by the impeachment.

TITLE II.

OF THE REMOVAL OF JUSTICES OF THE PEACE, POLICE JUSTICES, AND JUSTICES OF JUSTICES' COURTS AND THEIR CLERKS.

§ 132. Justices of the peace, police justices, justices of justices' courts and their clerks, removable by the appellate division of the supreme court.

Justices of the peace and judges, and justices of inferior courts, not of record, and their clerks, may be removed, as provided by the constitution, by the appellate division of the supreme court. The appellate division shall have power to order the proofs upon any proceedings hereunder to be taken before a referee to be appointed by such appellate division and to certify the reasonable expenses of such referee, which amount, so certified is hereby declared to be a charge against the city, town or village within which such justices of the peace, judge, or justice of inferior court, not of record, or clerk, exercises the duties of his office. Such court may also in its discretion require the person or persons instituting proceedings for the removal of either of the officials above named to give security, to be approved by such court, for the expenses incident to the hearing and determination thereof, in case the charges against such official are not sustained. (Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

Derivation: L. 1847, ch. 280, § 25, as amended by L. 1880, ch. 354, § 1. Substituted for former section 132 of the Criminal Code.

Matter of Prescott (1894), 77 Hun 518; 28 N. Y. Supp. 928; Matter of King (1889), 25 St. Rep. 792, 6 N. Y. Supp. 421; People ex. rel. Clapp v. Lisman (1903), 40 Misc. 374, 382, 82 N. Y. Supp. 268; Matter of Droege (1909), 129 App. Div. 866, 879, 114 N. Y. Supp. 375; Matter of Droege (1909), 197 N. Y. 44, 49.

PART IV.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

TITLE I. OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.
II. OF THE TIME OF COMMENCING CRIMINAL ACTIONS.
III. OF THE INFORMATION, AND PROCEEDINGS THEREON TO THE COMMITMENT INCLUSIVE.
IV. OF THE PROCEEDINGS AFTER COMMITMENT, AND BEFORE INDICTMENT.
V. OF THE INDICTMENT.
VI. OF THE PROCEEDINGS ON THE INDICTMENT BEFORE TRIAL.
VII. OF THE TRIAL.
VIII. OF THE PROCEEDINGS AFTER TRIAL, AND BEFORE JUDGMENT.
IX. OF THE JUDGMENT AND EXECUTION.
X. GENERAL PROVISIONS RELATING TO PUNISHMENT OF CRIME.
XI. OF APPEALS.
XII. OF MISCELLANEOUS PROCEEDINGS.

TITLE I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

SECTION 133. When a person leaves this state to elude its laws.
134. When a crime is committed partly in one county and partly in another.
135. When a crime is committed on the boundary of two or more counties, or within five hundred yards thereof.
136. Jurisdiction of crime on board of vessel.
137. Of crime committed in the state on board of any railway train, etc.
138. Indictment for libel.
139. Conviction or acquittal in another state, a bar, where the jurisdiction is concurrent.
140. Conviction or acquittal in another county, a bar, where the jurisdiction is concurrent.

§ 133. When a person leaves this state to elude its laws.

A person who leaves this st: with intent to elude any law

thereof against duelling or prize-fighting, or challenges thereto, or to do any act forbidden by such a law, or, who being a resident of this state, does an act out of it, which would be punishable as a violation of such a law, may be indicted and tried in any county of this state.

People v. Johnston (1907), 187 N. Y. 321.

§ 134. When a crime is committed partly in one county and partly in another.

When a crime is committed, partly in one county and partly in another, or the acts or effects thereof, constituting or requisite to the consummation of the offense, occur in two or more counties, the jurisdiction is in either county.

People v. Peckens (1897), 153 N. Y. 576, 76 St. Rep. 630; People v. Wicks (1896), 11 App. Div. 543, 42 N. Y. Supp. 630, aff'd 154 N. Y. 766; People v. Mitchell (1896), 49 App. Div. 534, 63 N. Y. Supp. 522, aff'd 168 N. Y. 604; People v. Crotty (1890), 30 St. Rep. 45, 9 N. Y. Supp. 937; Matter of McFarland (1891), 36 St. Rep. 574, 59 Hun 306, 13 N. Y. Supp. 22; People v. Dimick (1887), 5 Crim. Rep. 201, 107 N. Y. 13, 41 Hun 634; People v. Thorn (1897), 21 Misc. 132, 47 N. Y. Supp. 46; People v. Summerfield, 48 Misc. 242, 244, 245, 96 N. Y. Supp. 502; People v. Geyer (1909), 132 App. Div. 790, 792, 117 N. Y. Supp. 662; People v. Britton (1909), 134 App. Div. 275, 280.

§ 135. When a crime is committed on the boundary of two or more counties, or within five hundred yards thereof.

When a crime is committed on the boundary of two or more counties, or within five hundred yards thereof. the jurisdiction is in either county.

People v. Bates (1885), 38 Hun 181, 4 Crim. Rep. 216.

§ 136. Jurisdiction of crime on board a vessel.

When a crime is committed in this state on board of a vessel navigating a river, lake or canal, or lying therein in the course of her voyage, or in respect to any portion of the cargo or lading of such boat or vessel, the jurisdiction is in any county through which, or any part of which, such river or canal passes, or in which such lake is situated or on which it borders, or in the county where such voyage terminates, or would terminate if completed.

§ 137. Of crime committed in the state on board of any railway train, etc.

When a crime is committed in this state, in or on board of any

railway engine, train or car, making a passage or trip on or over any railway in this state, or in respect to any portion of the lading or freightage of any such railway train or engine car, the jurisdiction is in any county through which, or any part of which, the railway train or car passes, or has passed in the course of the same passage or trip, or in any county where such passage or trip terminates, or would terminate if completed.

§ 138. Indictment for libel.

When a crime of libel is committed by publication in any paper in this state, against a person residing in the state, the jurisdiction is in either the county where the paper is published, or in the county where the party libeled resides. But the defendant may have the place of trial changed to the county where the libel is printed, on executing a bond to the complainant in the penal sum of not less than two hundred and fifty dollars nor more than one thousand dollars, conditioned, in case the defendant is convicted, for the payment of the complainant's reasonable and necessary traveling expenses in going to and from his place of residence and the place of trial, and his necessary expenses in attendance thereon, which bond must be signed by two sufficient sureties, to be approved by a judge of a court of record exercising criminal jurisdiction.

Whenever the crime of libel is committed against a person not a resident of this state, the defendant must be indicted and the trial thereof had in the county where the libel is printed and published. But if the paper does not, upon its face, purport to be printed or published in a particular county of this state, the defendant may be indicted and the trial thereof had in any county where the paper is circulated. In no case, however, can the defendant be indicted for the printing or publication of one libel in more than one county of this state.

People v. Fornard (1909), 65 Misc. 457, 459.

§ 139. Conviction or acquittal in another state, a bar, where the jurisdiction is concurrent.

When an act charged as a crime is within the jurisdiction of *another state, territory* or country, as well as within the jurisdic-

tion of this state, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this state.

§ 140. Conviction or acquittal in another county, a bar, where the jurisdiction is concurrent.

When a crime is within the jurisdiction of two or more counties of this state, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another.

TITLE II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

SECTION 141. Prosecution for murder may be commenced at any time.
142. Limitation of five years.
143. Defendant out of state.
144. Indictment deemed found, when presented in court and filed.

§ 141. Prosecution for murder may be commenced at any time.

There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

People v. Austin (1901), 63 App. Div. 384; 71 N. Y. Supp. 601; People v Sewell (1907), 107 N. Y. Supp. 383.

§ 142. Limitation of five years.

An indictment for a felony, other than murder, must be found within five years after its commission, except where a less time is prescribed by statute. And an indictment for a misdemeanor must be found within two years after its commission.

People v. Nelson (1897), 153 N. Y. 94; 60 Amer. St. Rep. 592, 12 Crim. Rep. 368: People v. Austin (1901), 63 App. Div. 389; 71 N. Y. Supp. 601; People v. Lindenborn (1898), 23 Misc. 428, 52 N. Y. Supp. 101; People v. Durrin (1884), 2 Crim. Rep. 333; People ex rel. Kemmler v. Durston (1889), 7 Crim. Rep. 350, 7 N. Y. Supp. 135; People v. Gibson (1907), 122 App. Div. 71; 106 N. Y. Supp. 590; People v. Blake (1907), 121 App. Div. 615; 106 N. Y. Supp. 319; People v. Sewell (1907), 56 Misc. 251; People ex rel. Jerome v. Goff (1905), 49 Misc. 72, 107 N. Y. Supp. 383; 72 N. Y. Supp. 66.

§ 143. Defendant out of state.

If, when the crime is committed, the defendant be out of the state, the indictment may be found within the term herein limited after his coming within the state; and no time during which the *defendant* is not an inhabitant of, or usually resident within, the

State, or usually in personal attendance upon business or employment within the State, is part of the limitation.

People v. Durrin (1884), 2 Crim. Rep. 334; People v. Lindenborn (1898) 28 Misc. 428; 52 N. Y. Supp. 101; People v. Blake (1907), 121 App. Div. 619; People v. Sewell (1907), 56 Misc. 251, 107 N. Y. Supp. 883.

§ 144. Indictment deemed found when presented in court and filed.

An indictment is found, within the meaning of the last three sections, when it is duly presented by the grand jury in open court, and there received and filed.

People v. Wicks (1896), 42 N. Y. Supp. 630; People v. Olshei (1897), 20 Misc. 165, 12 Crim. Rep. 362; 45 N. Y. Supp. 49; People v. Blake (1907), 121 App. Div. 615; 106 N. Y. Supp. 819.

TITLE III.

OF THE INFORMATION AND PROCEEDINGS THEREON TO THE COMMITMENT INCLUSIVE.

CHAPTER I. The information.
II. The warrant of arrest.
III. Arrest by an officer under a warrant.
IV. Arrest by an officer without a warrant.
V. Arrest by a private person.
VI. Retaking, after an escape or rescue.
VII. Examination of the case, and discharge of the defendant holding him to answer.

CHAPTER I.

THE INFORMATION.

SECTION 145. Information defined.
146. Magistrate defined.
147. Who are magistrates.

§ 145. Information defined.

The information is the allegation made to a magistrate that a person has been guilty of some designated crime.

People v. Polhamus (1896), 8 App. Div. 185; 40 N. Y. Supp. 491; People v. James (1896), 11 App. Div. 610; 43 N. Y. Supp. 315, 12 Crim. Rep. 196; People ex rel. Baker v. Beatty (1886), 39 Hun 477; People v. Nowak (1889), 24 St. Rep. 274, 7 Crim. Rep. 70, 5 N. Y. Supp. 239; Hewitt v. Newburger (1892), 48 St. Rep. 813, 66 Hun. 232, 20 N. Y. Supp. 918, rev'd 141 N. Y. 538; People ex rel. Laird v. Hannan (1895), 73 St. Rep. 248, 37 N. Y. Supp. 702; People ex rel. Millard v. Roberts (1896), 74 St. Rep. 892, 40 N. Y. Supp. 457; Matter of Ramscar (1882), 1 Crim. Rep. 85; People v. Johnston (1887), 7 Crim. Rep. 402; People ex rel. Kenney v. Cornell (1894), 6 Misc. 568, 27 N. Y. Supp. 859; People v. Burns (1897), 19 Misc. 681, 44 N. Y. Supp. 1106, 12 Crim. Rep. 249; City of Hudson v. Granger (1898), 23 Misc. 402, 52 N. Y. Supp. 9; People ex rel Gardiner v. Olmstead (1898), 25 Misc. 349, 55 N. Y. Supp. 472; People v. Hiley (1900), 33 Misc. 169, 68 N. Y. Supp. 361; People ex rel. Livingston v. Wyatt (1906), 186 N. Y. 389, 113 App. Div. 114, 99 N. Y. Supp. 114; People ex rel. Sampson v. Dunning (1906), 113 App. Div. 39, 98 N. Y. Supp. 1067; People ex rel. Farley v. Crane (1904), 94 App. Div. 397, 88 N. Y. Supp. 343; People v. Zabor (1904), 44 Misc. 633, 90 N. Y. Supp. 412; People ex rel. Fleming v. Mayer (1903), 41 Misc. 290, 84 N. Y. Supp. 71; People ex rel. Lewisohn v. Wyatt (1903), 39 Misc. 456, 458, 80 N. Y. Supp. 198; *People ex rel.* Cornett v. Worden (1908), 60 Misc. 526.

§ 146. Magistrate defined.

A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a crime.

Killoran v. Barton (1882), 26 Hun 649; County of Orleans v. Winchester (1892), 45 St. Rep. 411, 18 N. Y. Supp. 668; People v. Nowak (1889), 7 Crim. Rep. 70, 24 St. Rep. 274, 5 N. Y. Supp. 239; People ex rel. Kenny v. Cornell (1894), 6 Misc. 568, 27 N. Y. Supp. 859.

§ 147. Who are magistrates.

The following persons are magistrates:

1. The justices of the supreme court;
2. The judges of any city court;
3. The county judges and special county judges;
4. The city judge of the city of New York and the judges of the court of general sessions in the city and county of New York;
5. The justices of the peace;
6. The police and other special justices, appointed or elected in a city, village or town;
7. The mayors and recorders of cities. But in the city of New York, the only magistrates authorized to commit children to institutions, are the justices of the supreme court, the recorder, the city judge of the city of New York, and judges authorized to hold the court of general sessions, and the police justices.
8. The judges of the city court of Buffalo.

People v. McGlain (1883), 91 N. Y. 241, 12 Abb. N. C. 172, 1 Crim. Rep. 159; People ex rel. Burby v. Howland (1898), 155 N. Y. 278; Killoran v. Barton (1882), 26 Hun 649; Matter of McFarland (1891), 59 Hun 306, 36 St. Rep. 574, 13 N. Y. Supp. 22; People v. Nowak (1889), 24 St. Rep. 274, 7 Crim. Rep. 70, 5 N. Y. Supp. 239; County of Orleans v. Winchester (1892), 45 St. Rep. 411, 18 N. Y. Supp. 668; Hommert v. Gleason (1891), 14 N. Y. Supp. 569, 38 St. Rep. 343; People ex rel. Saloom v. Whitney (1898), 24 Misc. 265, 53 N. Y. Supp. 570; People v. Angie (1902), 74 App. Div. 539, 541, 77 N. Y. Supp. 882; People ex rel. Clapp v. Listman (1903), 40 Misc. 374, 82 N. Y. Supp. 263.

CHAPTER II.

THE WARRANT OF ARREST.

SECTION 148. Examination of the prosecutor and his witnesses, upon the information.
149. Depositions, what to contain.
150. In what case warrant of arrest may be issued.
151. Form of warrant.
152. Name or description of the defendant, in the warrant and statement of the offense.
153. Warrant to be directed to and executed by a peace officer.
154. Who are peace officers.
155. Warrant issued by certain judges.
156. Warrant issued by other magistrates.
157. Indorsement on the warrant, for service in another county, how and upon what proof to be made.
158. Defendant, arrested for felony.
159. Defendant, arrested for a misdemeanor.
160. Proceedings on taking bail from the defendant, in such case.
161. Proceedings, where he is admitted to bail in such case, but bail is not given.
162. Prisoner carried from county to city.
163. Power and privilege of officer.
164. When magistrate issuing the warrant is unable to act.
165. Defendant in all cases to be taken before a magistrate, without delay.
166. Defendant, before another magistrate than the one who issued the warrant.

§ 148. Examination of the prosecutor and his witnesses, upon the information.

When an information is laid before a magistrate, of the commission of a crime, he must examine on oath the informant and prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

People v. Polhamus (1896), 8 App. Div. 135, 40 N. Y. Supp. 491; People v. James (1896), 11 App. Div. 610, 12 Crim. Rep. 196; People v. Armour (1897), 18 App. Div. 589, 46 N. Y. Supp. 317; Kranskoff v. Tallman (1899), 38 App. Div. 275, 56 N. Y. Supp. 967; Simis v. Alwang (1901), 61 App. Div. 426, 70 N. Y. Supp. 580; People v. Nowak (1889), 24 St. Rep. 274, 5 N. Y. Supp. 289; *Sayles* v. Hoetyel (1892), 48 St. Rep. 206, 20 N. Y. Supp. 553; People v. *Olmstead (1893), 56 St.* Rep. 818, 74 Hun 327, 26 N. Y. Supp. 818; People ex

rel. Gunn v. Webster (1894), 58 St. Rep. 227, 75 Hun 281, 26 N. Y. Supp. 1007; People ex rel. Laird v. Haman (1895), 73 St. Rep. 248, 37 N. Y. Supp. 702; People v. Winness (1885), 3 Crim. Rep. 90; People v. Johnston (1887), 7 Crim. Rep. 402; People ex rel. Livingston v. Wyatt (1906), 186 N. Y. 390, 113 App. Div. 113, 99 N. Y. Supp. 114; People ex rel. Perkins v. Moss (1906), 113 App. Div. 332, 99 N. Y. Supp. 138; People ex rel. Sampson v. Dunning (1906), 113 App. Div. 39, 98 N. Y. Supp. 1067; Matter of Wheaton v. Slattery (1904), 96 App. Div. 102, 88 N. Y. Supp. 1074; People ex rel. Farley v. Crane (1904), 94 App Div. 400, 88 N. Y. Supp. 343; People v. Miller (1903), 81 App. Div. 257, 80 N. Y. Supp. 1070; People ex rel. Sandman v. Tuthill (1903), 79 App. Div. 24, 79 N. Y. Supp. 905; People ex rel. Gordon v. Wahle (1906), 49 Misc. 486, 99 N. Y. Supp. 895; People v. Zabor (1904), 44 Misc. 685, 90 N. Y. Supp. 412; People ex rel. Fleming v. Mayer (1903), 41 Misc. 290, 369, 84 N. Y. Supp. 71; O'Dell v. Hatfield (1903), 40 Misc. 13, 81 N. Y. Supp. 158; People ex rel. Jacobs v. McGirr (1902), 39 Misc. 471, 80 N. Y. Supp. 171; People ex rel. Lewisohn v. Wyatt (1902), 39 Misc. 458, 80 N. Y. Supp. 198.

People ex rel. Hegeman v. Corrigan (1908), 129 App. Div. 62, 64, 113 N. Y. Supp. 504, revd. 195 N. Y. 1.

§ 149. Depositions, what to contain.

The depositions must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the crime and the guilt of the defendant.

People v. James (1896), 11 App. Div. 611, 43 N. Y. Supp. 315, 12 Crim. Rep. 196; Simis v. Alwang (1901), 61 App. Div. 427, 70 N. Y. Supp. 580; Loomis v. Reader (1886), 41 Hun 269; People v. McIntosh (1886), 5 Crim. Rep. 40; People v. Burns (1897), 19 Misc. 681, 44 N. Y. Supp. 1106; Smith v. Bell & Fife Foundry Co. (1908), 127 App. Div. 278; People ex rel. Perkins v. Moss (1907), 187 N. Y. 418, 113 App. Div. 332, 99 N. Y. Supp. 138; People ex rel. Livingston v. Wyatt (1906), 186 N. Y. 390, 113 App. Div. 113, 99 N. Y. Supp. 114; People ex rel. Sampson v. Dunning (1906), 113 App. Div. 39, 98 N. Y. Supp. 1067; Matter of Wheaton v. Slattery (1904), 96 App. Div. 102, 88 N. Y. Supp. 1074; People v. Miller (1903), 81 App. Div. 257, 80 N. Y. Supp. 1070; People ex rel. Sandman v. Tuthill (1903), 79 App. Div. 24, 79 N. Y. Supp. 905; O'Dell v. Hatfield (1903), 40 Misc. 13, 81 N. Y. Supp. 158.

§ 150. In what case warrant of arrest may be issued.

If the magistrate be satisfied therefrom, that the crime complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

People v. James (1896), 11 App. Div. 611, 43 N. Y. Supp. 315, 12 Crim. Rep. 196; Kranskopf v. Tallman (1899), 38 App. Div. 275; 56 N. Y. Supp. 967; McKelney v. Marah (1901), 63 App. Div. 398, 71 N. Y. Supp. 541; Killoran v. Barton (1882), 26 Hun 649; People v. Board of Auditors (1893), 24 N. Y. Supp. 974; People v McIntosh (1886), 5 Crim. Rep. 40; Smith v. Bell & Fife Foundry Co. (1908), 127 App. Div. 278; People ex rel. Perkins v. Moss (1907), 187 N. Y. 419, 113 App. Div. 339, 99 N. Y. Supp. 138; People ex rel. Livingston v.

Wyatt (1906), 186 N. Y. 390, 113 App. Div. 113, 99 N. Y. Supp. 114; People ex rel. Farley v. Crane (1904), 94 App. Div. 397, 88 N. Y. Supp. 348; People v. Zabor (1904), 44 Misc. 635, 90 N. Y. Supp. 412; People ex rel. Clapp v. Listman (1903), 40 Misc. 374, 82 N. Y. Supp. 268.

§ 151. Form of the warrant.

A warrant of arrest is an order in writing in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form, the blanks being properly filled:

"COUNTY OF

"In the name of the people of the State of New York, to any peace officer in the :

"Information, upon oath, having been this day laid before me that the crime of has been committed and accusing thereof,

"You are therefore commanded forthwith to arrest the above-named , and bring him before , at

"Dated at , this day of , 18

.....

Justice of the Peace."

The warrant must direct that the defendant be brought before the magistrate issuing the warrant, or if the offense was committed in another town, and is one which a court of special sessions has jurisdiction to try, or which a magistrate has jurisdiction to hear and determine, he must direct that the defendant be brought before a magistrate of the town in which the offense was committed.

People v. James (1896), 11 App. Div. 611, 43 N. Y. Supp. 315, 2 Crim. Rep. 196; Kranskopf v. Tallman (1899), 38 App. Div. 278, 56 N. Y. Supp. 967; People v. McLaughlin (1901), 57 App. Div. 457, 68 N. Y. Supp. 246; Killoran v. Barton (1882), 26 Hun 649; People ex rel. Baker v. Beatty (1886), 39 Hun 477, 4 Crim. Rep. 288; People ex rel. Gunn v. Webster (1894), 75 Hun 281, 58 St. Rep. 227, 26 N. Y. Supp. 1007; People ex rel. Lotz v. Norton (1894), 76 Hun 9, 27 N. Y. Supp. 851; People v. Board of Auditors (1893), 24 N. Y. Supp. 974; People v. Upton (1890), 29 St. Rep. 778, 9 N. Y. Supp. 684; People v. Johnston (1887), 7 Crim. Rep. 402; People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 849, 55 N. Y. Supp. 472; People ex rel. Joseph v. Jerome (1901), 34 Misc. 576; 70 N. Y. Supp. 377; People ex rel. Livingston v. Wyatt (1906), 186 N. Y. 390; McCarg v. Burr (1906), 186 N. Y. 470, 106 App. Div. 275, 276, 277, 281, 94 N. Y. *Supp. 675.*

§ 152. Name or description of the defendant, in the warrant and statement of the offense.

The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant, and the time of issuing it, and the city, town or village where it is issued, and be signed by the magistrate with his name of office.

People v. James (1896), 11 App. Div. 611, 43 N. Y. Supp. 315, 2 Crim. Rep. 196; Keating v. Filts (1897), 13 App. Div. 2, 43 N. Y. Supp. 124; Kranskopf v. Tallman (1899), 38 App. Div. 278, 56 N. Y. Supp. 967; People ex rel. Baker v. Beatty (1886), 39 Hun 477, 4 Crim. Rep. 288; People v. Upton (1890), 29 St. Rep. 778, 9 N. Y. Supp. 684; Chase v. Belden (1885), 34 Misc. 576, 70 N. Y. Supp. 377; People ex rel. Farrington v. Mensching (1907), 187 N. Y. 27; People ex rel. Sampson v. Dunning (1906), 113 App. Div. 37, 98 N. Y. Supp. 1067; People ex rel. Friedman v. Warden (1902), 37 Misc. 676, 76 N. Y. Supp. 424.

§ 153. Warrant to be directed to and executed by a peace officer.

The warrant must be directed to, and executed by, a peace officer.

§ 154. Who are peace officers.

A peace officer is a sheriff of a county, or his under-sheriff or deputy, or a constable, marshal, police constable or policeman of a city, town or village.

Deyoe v. Woodworth (1895), 144 N. Y. 448; People ex rel. Board, etc. v. N. Y. Soc. P. C. C. (1900), 161 N. Y. 241; People v. Doyle (1896), 11 App. Div. 448, 42 N. Y. Supp. 319; People ex rel. White v. Clinton (1898), 28 App. Div. 479, 51 N. Y. Supp. 115; Pearce v. Nester (1889), 50 Hun 546, 3 N. Y. Supp. 720; Deyoe v. Ewen (1893), 53 St. Rep. 611, 24 N. Y. Supp. 372; Deyoe v. Woodworth (1895), 63 St. Rep. 733; McClellan v. Zwingli (1898), 24 N. Y. Supp. 373; Fox v. Mohawk, etc., Humane Soc. (1897), 20 Misc. 467, 46 N. Y. Supp. 232, 25 App. Div. 31, 165 N. Y. 517; People ex rel. Conway v. Board, etc. (1908), 126 App. Div. 487, 110 N. Y. Supp. 745; People ex rel. Drake v. Andrews (1909) 134 App. Div. 32, 37.

§ 155. Warrant issued by certain judges.

If the warrant be issued by a justice of the supreme court, recorder, city judge or judge of a court of general sessions in the city and county of New York, or by a county judge, or by the recorder of a city where jurisdiction is conferred by law upon such recorder or by a judge of the city court, it may be directed

generally to any peace officer in the State, and may be executed by any of those officers to whom it may be delivered.

County of Orleans v. Winchester (1892), 18 N. Y. Supp. 668, 45 St. Rep. 411.

§ 156. Warrant by other magistrates.

If it be issued by any other magistrate, it may be directed generally to any peace officer in the county in which it is issued, and may be executed in that county; or if the defendant be in another county, it may be executed therein, upon the written direction of a magistrate of such other county indorsed upon the warrant, signed by him with his name of office, and dated at the city, town or village where it is made, to the following effect: "This warrant may be executed in the county of Monroe," [or as the case may be.]

People ex rel. Burby v. Howland (1898), 155 N. Y. 278; County of Orleans v. Winchester (1892), 18 N. Y. Supp. 668, 45 St. Rep. 411; Foy v. Barry (1903), 87 App. Div. 293, 84 N. Y. Supp. 335.

§ 157. Indorsement on the warrant, for service in another county, how and upon what proof to be made.

The indorsement mentioned in the last section cannot, however, be made, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon this proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterward appear that the warrant was illegally or improperly issued.

Foy v. Barry (1903), 87 App. Div. 293, 84 N. Y. Supp. 335.

§ 158. Defendant, arrested for felony.

If the crime charged in the warrant be a felony the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county, as provided in section 164.

People ex rel. Navagh v. Frink (1886), 41 Hun 193, 4 Crim. Rep. 289; People v. Board of Auditors (1893), 24 N. Y. Supp. 974.

§ 159. Defendant, arrested for a misdemeanor.

If the crime charged in the warrant be a misdemeanor, and *the defend*ant be arrested in another county, the officer must, upon *being required by the* defendant, take him before a magistrate in

that county, who must admit the defendant to bail, for his appearance before the magistrate named in the warrant, and take bail from him accordingly.

§ 160. Proceedings on taking bail from the defendant in such case.

On taking bail the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and, without delay, deliver the warrant and undertaking to the magistrate before whom the defendant is required to appear.

§ 161. Proceedings, where he is admitted to bail in such case, but bail is not given.

If, on the admission of the defendant to bail, as provided in section one hundred and fifty-nine, bail be not forthwith given, the officer must take the defendant before a magistrate as directed by the warrant, or some other magistrate in the same town or county, as provided in section one hundred and sixty-four.

People v. Board of Auditors (1893), 24 N. Y. Supp. 974.

§ 162. Prisoner carried from county to city.

An officer who has arrested a defendant on a criminal charge, in any county, may carry such prisoner through such parts of any county or counties as shall be in the ordinary route of travel from the place where the prisoner shall have been arrested, to the place where he is to be conveyed and delivered under the process by which the arrest shall have been made; and such conveyance shall not be deemed an escape.

§ 163. Power and privilege of officer.

While passing through such other county or counties the officers having the prisoner in their charge shall not be liable to arrest on civil process; and they shall have the like power to require any citizen to aid in securing such prisoner, and to retake him if he escapes, as if they were in their own county; and a refusal or neglect to render such aid shall be an offense, in the same manner as if they were officers of the county where such aid shall be required.

§ 164. When magistrate issuing the warrant is unable to act.

When, by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, or before a magistrate of the town in which the offense was committed, he may, if that magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the town in which the magistrate before whom the warrant is returnable resides, if there be such a magistrate accessible and qualified to act, and otherwise, before the nearest or most accessible magistrate in the same county. The officer must, at the same time, deliver to the magistrate the warrant, with his return indorsed and subscribed by him.

People ex rel. Navagh v. Frink (1886), 41 Hun 193, 4 Crim. Rep. 297; People ex rel. Lotz v. Norton (1894), 76 Hun 9, 27 N. Y. Supp. 851; People v. Board of Auditors (1893), 24 N. Y. Supp. 974; McCarg v. Burr (1908), 106 App. Div. 275, 280, 94 N. Y. Supp. 675.

§ 165. Defendant in all cases to be taken before a magistrate without delay.

The defendant must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night.

Pastor v. Regan (1894), 62 St. Rep. 205, 9 Misc. 549, 30 N. Y. Supp. 657; People ex rel. Gow v. Bingham (1907), 57 Misc. 70, 72, 107 N. Y. Supp. 1011; Sutherland v. St. Lawrence County (1903), 42 Misc. 44, 85 N. Y. Supp. 696.

§ 166. Defendant, before another magistrate than the one who issued the warrant.

If the defendant be taken before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

People ex rel. Burby v. Howland (1898), 155 N. Y. 281.

CHAPTER III.

ARREST BY AN OFFICER UNDER A WARRANT.

SECTION 167. Arrest defined.
168. By whom arrest may be made.
169. Every person bound to aid an officer in an arrest.
170. When the arrest may be made.
171. How an arrest is made.
172. No further restraint allowed than is necessary.
173. Officer must state his authority, and show warrant, if required.
174. If defendant flee or resists, officer may use all necessary means to effect arrest.
175, 176. When an officer may break open a door or window.

§ 167. Arrest defined.

Arrest is the taking of a person into custody that he may be held to answer for a crime.

Killoran v. Barton (1882), 26 Hun 649; People v. Glennon (1908), 175 N. Y. 55; People v. Jeratino (1909), 62 Misc. 587, 116 N. Y. Supp. 1121.

§ 168. By whom an arrest may be made.

An arrest may be:

1. By a peace officer, under a warrant;
2. By a peace officer, without warrant; or
3. By a private person.

People v. Chandler (1900), 54 App. Div. 118; 66 N. Y. Supp. 391; Killoran v. Barton (1882), 26 Hun 649; People v. Shanley (1886), 40 Hun 478, 4 Crim. Rep. 472; People ex rel. Gunn v. Webster (1894), 75 Hun 281, 26 N. Y. Supp. 1007, 58 St. Rep. 227; Wren v. Kennedy Valve Manufacturing Co. (1908), 128 App. Div. 289.

§ 169. Every person bound to aid an officer in an arrest.

Every person must aid an officer in the execution of a warrant, if the officer require his aid and be present and acting in its execution.

§ 170. When the arrest may be made.

If the crime charged be a felony, the arrest may be made on any day, and at any time of the day or during any night. If it

be a misdemeanor, the arrest cannot be made on Sunday, or at night, unless by direction of the magistrate indorsed upon the warrant.

People v. Howard (1895), 13 Misc. 764, 69 St. Rep. 609; 35 N. Y. Supp. 233; People v. Bradley (1906), 58 Misc. 507, 111 N. Y. Supp. 625.

§ 171. How an arrest is made.

An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

§ 172. No further restraint allowed than is necessary.

The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

People ex rel. Gow v. Bingham (1907), 57 Misc. 70, 72, 107 N. Y. Supp. 1011.

§ 173. Officer must state his authority, and show warrant, if required.

The defendant must be informed by the officer that he acts under the authority of the warrant, and he must also show the warrant, if required.

People v. Shanley (1886), 40 Hun 478, 4 Crim. Rep. 472.

§ 174. If defendant flee or resist, officer may use all necessary means to effect arrest.

If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

§ 175. When officer may break open a door or window.

The officer may break open an outer or inner door or window of any building, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

§ 176. When officer may break open a door or window.

An officer may break open an outer or inner door or window of any building, for the purpose of liberating a person, who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

CHAPTER IV.

ARREST BY AN OFFICER, WITHOUT A WARRANT.

SECTION 177. In what cases allowed.
178. May break open a door or window, if admittance refused.
179. May arrest at night, on reasonable suspicion of felony.
180. Must state his authority, and cause of arrest, except where party is committing felony or is pursued after escape.
181. May take before a magistrate, a person arrested by a bystander for breach of the peace.
182. Magistrate may commit by verbal or written order, for offenses committed in his presence.

§ 177. In what cases allowed.

A peace officer may, without a warrant, arrest a person:

1. For a crime, committed or attempted in his presence;

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it.

People v. Wilson (1894), 141 N. Y. 185, 56 St. Rep. 881; Snead v. Bonnoil (1901), 166 N. Y. 328; People v. Doyle (1896), 11 App. Div. 448, 42 N. Y. Supp. 319; People v. James (1896), 11 App. Div. 610, 12 Crim. Rep. 196, 43 N. Y. Supp. 315; Matter of Rupp (1898), 33 App. Div. 471, 53 N. Y. Supp. 927; Evins v. Metr. St. Ry. Co. (1900), 47 App. Div. 519, 62 N. Y. Supp. 495; Thompson v. Fisk (1900), 50 App. Div. 72, 63 N. Y. Supp. 352; Barry v. Third Ave. R. R. Co. (1900), 51 App. Div. 386, 64 N. Y. Supp. 615; Cravin v. Bloomingdale (1900), 54 App. Div. 268, 66 N. Y. Supp. 525; People v. Shanley (1886,) 40 Hun 478; People v. Barber (1893), 74 Hun 370, 26 N. Y. Supp. 417; People ex rel. Gunn v. Webster (1894), 75 Hun 281, 58 St. Rep. 227, 26 N. Y. Supp. 1007; Tupper v. Morin (1890), 12 N. Y. Supp. 311, 25 Abb. N. C. 402; Smith v. Botens (1891), 13 N. Y. Supp. 222, 36 St. Rep. 54; Hood v. Hayward (1895), 35 N. Y. Supp. 233; Wright v. Wright (1893), 56 St. Rep. 305, 26 N. Y. Supp. 238; People v. Feurst (1895), 13 Misc. 306, 34 N. Y. Supp. 1115, 11 Crim. Rep. 413; People v. Howard (1895), 13 Misc. 764; Parke v. Gilligan (1895), 14 Misc. 124; 35 N. Y. Supp. 477; Murphy v. Snitzpan (1896), 15 Misc. 500, 36 N. Y. Supp. 1013; Greater New York Athletic Club v. Wurster (1897), 19 Misc. 450, 43 N Y. Supp.

708; People v. Mulkins (1898), 25 Misc. 601, 54 N. Y. Supp. 414; Westbrook v. New York Sun Assn. (1900), 32 Misc. 39, 63 N. Y. Supp. 278, aff'd 58 App. Div. 562, 69 N. Y. Supp. 266; People v. Russell (1901), 35 Misc. 766, 72 N. Y. Supp. 1; Schultz v. Greenwood Cemetery (1907), 190 N. Y. 281, 100 N. Y. Supp. 200; People ex rel. Conway Bros. v. Board, etc. (1908), 126 App. Div. 487; Phillips v. Leary (1906), 114 App. Div. 872, 100 N. Y. Supp. 200; Samuel v. Wanamaker (1905), 107 App. Div. 433, 436, 95 N. Y. Supp. 270; Grinnell v. Weston (1904), 95 App. Div. 454, 88 N. Y. Supp. 781; People ex rel. Farley v. Crane (1904), 94 App. Div. 402, 88 N. Y. Supp. 843; McMorris v. Howell (1903), 89 App. Div. 272, 278, 85 N. Y. Supp. 1018; People v. Glennon (1903), 78 App. Div. 271, 278, 280, 79 N. Y. Supp. 997, rev'd 175 N. Y. 45; People v. Hochstim (1902), 76 App. Div. 25, 28, 78 N. Y. Supp. 688, 986, rev'g 36 Misc. 562; People v. Bradley (1903), 58 Misc. 507, 11 N. Y. Supp. 625; People v. Anglie (1902), 74 App. Div. 539, 541, 77 N. Y. Supp. 832; People ex rel. Clapp v. Listman, (1903), 40 Misc. 374, 82 N. Y. Supp. 263; People v. Glennon (1902), 37 Misc. 1, 5, 74 N. Y. Supp. 794; s. c., 175 N. Y. 45, 55; Tyson v. Bauland Co. (1906), 186 N. Y. 400; People v. Jeratino (1909), 62 Misc. 587, 116 N. Y. Supp. 1121; Johnston v. Bruckheimer (1909), 133 App. Div. 649, 118 N. Y. Supp. 189; Gearity v. Strasbourger (1909), 133 App. Div. 701, 118 N. Y. Supp. 257; People v. Brown (1909), 64 Misc. 677; Schultz v. United States Fidelity and Guaranty Co. (1909), 134 App. Div. 260, 262.

§ 178. May break open a door or window, if admittance refused.

To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a building, if, after notice of his office and purpose, he be refused admittance.

§ 179. May arrest at night, on reasonable suspicion of felony.

He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterward appear that a felony had been committed, but that the person arrested did not commit it.

People v. Ryan (1891), 28 St. Rep. 490, 8 N. Y. Supp. 370.

§ 180. Must state his authority, and cause of arrest, except where party is committing felony or is pursued after escape.

When arresting a person without a warrant the officer must inform him of the authority of the officer and the cause of the arrest, except when the person arrested is in the actual commission of a crime, or is pursued immediately after an escape.

People v. James (1896), 11 App. Div. 610, 43 N. Y. Supp. 315, 12 Crim. Rep. 196. *Snead v. Bonnell (1900), 49* App. Div. 333, 63 N. Y. Supp. 553, 166 N. Y. 328.

§ 181. May take before a magistrate a person arrested by a bystander for breach of the peace.

A peace officer may take before a magistrate a person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

Bank v. Drumgoole (1888), 106 N. Y. 67.

§ 182. Magistrate may commit by verbal or written order, for offenses committed in his presence.

When a crime is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

People v. Glennon (1903), 175 N. Y. 55; People v. Jeratino (1909), 62 Misc. 587, 116 N. Y. Supp. 1121.

CHAPTER V.

ARREST BY A PRIVATE PERSON.

SECTION 183. In what cases allowed.
184. Must inform the party of the cause of arrest, except when actually committing the offense or on pursuit after escape.
185. Must immediately take prisoner before a magistrate, or deliver him to a peace officer.

§ 183. In what cases allowed.

A private person may arrest another:

1. For a crime committed or attempted in his presence;

2. When the person arrested has committed a felony, although not in his presence.

People v. Shanley (1886), 40 Hun 478; People ex rel. Gunn v. Webster (1894), 75 Hun 281, 58 St. Rep. 227, 26 N. Y. Supp. 1007; Woodhull v. Mayor, etc. (1894), 76 Hun 397, 28 N. Y. Supp. 120; Stevens v. Van Ness (1892), 47 St. Rep. 385, 19 N. Y. Supp. 950; Smith v. Botens (1891), 13 N. Y. Supp. 224, 36 St. Rep. 54; Ball v. Harrigan (1892), 19 N. Y. Supp. 913; Murphy v. Snitzpan (1896), 15 Misc. 500, 72 St. Rep. 288, 36 N. Y. Supp. 1013; Athletic Club v. Wurster (1897), 19 Misc. 450, 43 N. Y. Supp. 703; Grinnell v. Weston (1904), 95 App. Div. 457, 88 N. Y. Supp. 781; McMorris v. Howell (1903), 89 App. Div. 278, 85 N. Y. Supp. 1018; Tobin v. Bell (1902), 73 App. Div. 41, 45, 76 N. Y. Supp. 425; People ex rel. Clapp v. Listman (1903), 40 Misc. 374, 82 N. Y. Supp. 263; People v. Glennon (1902), 37 Misc. 1, 5, 74 N. Y. Supp. 794; People v. Hochstim (1901), 36 Misc. 562, 571, 73 N. Y. Supp. 626; Johnston v. Bruekheimer (1909), 133 App. Div. 649, 118 N. Y. Supp. 189; Gearity v. Strasbourger (1909), 133 App. Div. 701, 118 N. Y. Supp. 257.

§ 184. Must inform the party of the cause of arrest, except when actually committing the offense or on pursuit after escape.

A private person, before making an arrest, must inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the crime, or when he is arrested on pursuit immediately after its commission.

§ 185. Must immediately take prisoner before a magistrate, or deliver him to a peace officer.

A private person, who has arrested another for the commission of a crime, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

Cunningham v. Shea (1896), 11 App. Div. 627, 97 N. Y. Supp. 884; Tobin v. Bell (1902), 73 App. Div. 41, 46, 76 N. Y. Supp. 425; People ex rel. Clapp v. Listman (1903), 40 Misc. 374, 82 N. Y. Supp. 263.

CHAPTER VI.

RETAKING, AFTER AN ESCAPE OR RESCUE.

SECTION 186. May be at any time, or in any place in the state.
187. May break open a door or window, if admittance refused.

§ 186. May be at any time, or in any place in the state.

If a person arrested escape or be rescued, the person, from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the state.

§ 187. May break open a door or window, if admittance refused.

To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a building.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT OR HOLDING HIM TO ANSWER.

SECTION 188. Magistrate to inform defendant of the charge, and his right to counsel.
189. Time to send, and sending for counsel.
190. On appearance of counsel, or waiting for him a reasonable time examination to proceed.
191. When to be completed; adjournment.
192. On adjournment, defendant to be committed, or discharged on deposit of money.
193. Form of commitment for examination.
194. Depositions, to be read on examination, and witnesses examined.
195. Examination of witnesses to be in presence of defendant, and witnesses to be cross-examined in his behalf.
196. Defendant to be informed of his right to make a statement.
197. Waiver of his right, and its effect.
198, 199. Statement, how taken.
200. How reduced to writing, and authenticated.
201. After statement or waiver, defendant's witnesses to be examined.
202. Witnesses to be kept apart.
203. Who may be present at examination.
204. Testimony, how taken and authenticated.
205. Depositions and statement, how and by whom kept.
206. Defendant entitled to copies of depositions and statement.
207. Defendant, when and how to be discharged.
208. When and how to be committed.
209. Order for commitment.
210. Certificate of bail being taken.
211. Defendant to choose how he shall be tried.
212. Order for bail, on commitment.
213, 214. Form of commitment.
215. Undertaking of witnesses to appear, when and how taken.
216. Security for appearance of witness, when and how required.
217. Witness under sixteen.
218. Witness to be committed, on refusal to give security for appearance.
219. Witness, unable to give security, may be conditionally examined.
220. Justice's criminal docket.
221. Magistrate to return depositions, etc.
221a. Recognizances and other papers to be filed.

§ 188. Magistrate to inform defendant of the charge, and his right to counsel.

When the defendant is brought before a magistrate upon an

arrest either with or without warrant on a charge of having committed a crime, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

People v. Mondon (1886), 103 N. Y. 211, 4 Crim. Rep. 561, 88 Hun 191; People v. McGloin (1888), 91 N. Y. 241, 1 Crim. Rep. 154; People v. Molineux, (1901), 168 N. Y. 331; People v. James (1896), 11 App. Div. 611, 43 N. Y. Supp. 315; People v. Collins, (1901), 57 App. Div. 259, 68 N. Y. Supp. 151; People v. McKenna (1901), 62 App. Div. 328, 70 N. Y. Supp. 1057; People ex rel. Navagh v. Frink (1886), 41 Hun 195, 4 Crim. Rep. 297; People ex rel. Baker v. Beatty (1886), 39 Hun 477, 4 Crim. Rep. 288; People v. Cook (1887), 45 Hun 34; People ex rel. Gunn v. Webster (1894), 75 Hun 281, 58 St. Rep. 227, 26 N. Y. Supp. 1007; Hommert v. Gleason (1891), 38 St. Rep. 343, 14 N. Y. Supp. 568; Loeser v. Liebman (1891), 14 N. Y. Supp. 569; People ex rel. Steinhardt v. Fuller (1900), 68 N. Y. Supp. 743; People v. Haines (1888), 6 Crim. Rep. 102, 1 N. Y. Supp. 56; People v. Burns (1897), 19 Misc. 681, 44 N. Y. Supp, 1106, 12 Crim. Rep. 248; People v. Randazzio (1909), 194 N. Y. 148; People ex rel. Livingston v. Wyatt (1906), 113 App. Div. 115, 99 N. Y. Supp. 114; People ex rel. Farley v. Crane (1904), 94 App. Div. 400, 88 N. Y. Supp. 343; People ex rel. Perkins v. Moss (1907), 187 N. Y. 418; People ex rel. Livingston v. Wyatt (1906), 113 App. Div. 114, 99 N. Y. Supp. 114.

§ 189. Time to send, and sending for counsel.

He must also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel in the town or city, as the defendant may name. The officer must, without delay and without fee, perform that duty.

People v. McKenna (1901), 62 App. Div. 334, 70 N. Y. Supp. 1057; People ex rel. Navagh v. Frink (1886), 41 Hun 195; People v. Cook (1887), 45 Hun 34; People v. Burns (1897), 19 Misc. 681, 44 N. Y. Supp. 1106.

§ 190. On appearance of counsel, or waiting for him a reasonable time, examination to proceed.

The magistrate, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, must, after waiting a reasonable time therefor, proceed to examine the case, unless the defendant waives examination and elects to give bail, in which case the magistrate must admit the defendant to bail if the crime is bailable, as provided in section two hundred and ten; and in that case witnesses in attendance or shown *to be material for* the people may be required to appear and testify,

or to be examined conditionally as prescribed in sections two hundred and fifteen, two hundred and sixteen, two hundred and seventeen, two hundred and eighteen, two hundred and nineteen and two hundred and twenty.

People ex rel. Navagh v. Frink (1886), 41 Hun 195; People ex rel. Livingston v. Wyatt (1906), 113 App. Div. 115, 99 N. Y. Supp. 114.

§ 191. When to be completed; adjournment.

The examination must be completed at one session, unless the magistrate, for good cause shown, adjourn it. The adjournment cannot be for more than two days at each time, unless by consent or on motion of the defendant.

People v. McKenna (1901), 62 App. Div. 330; 70 N. Y. Supp. 1057; Matter of Blair (1900), 32 Misc. 177, 65 N. Y. Supp. 640.

§ 192. On adjournment, defendant to be committed, or discharged on deposit of money.

If an adjournment be had for any cause, the magistrate must commit the defendant for examination, or discharge him from custody, upon his giving bail to appear during the examination, or upon the deposit of money as provided in this Code, to make sure of his appearance at the time to which the examination is adjourned.

People v. Laidlaw (1886), 102 N. Y. 588; People v. McKenna (1901), 62 App. Div. 330, 70 N. Y. Supp. 1057; Sutherland v. St. Lawrence Co. (1905), 101 App. Div. 302, 91 N. Y. Supp. 962, s. c., 42 Misc. 45, 85 N. Y. Supp. 696; People ex rel. Farley v. Crane (1904), 94 App. Div. 400, 88 N. Y. Supp. 343; People ex rel. Persch v. Flynn (1909), 64 Misc. 278, 118 N. Y. Supp. 532.

§ 193. Form of commitment for examination.

The commitment for examination must be to the following effect:

" State of New York, }
" County of ..... } *ss.*

" In the name of the people of the State of New York.

" To the sheriff of the county of ....." (or in the city and county of New York " to the keeper of the city prison of the city and county of New York.")

" A. B. having been brought before me under a warrant of arrest upon the charge of (stating briefly the nature of the crime) is com-

mitted for examination to the sheriff of the county of.....," or in city or county of New York "to the keeper of the city prison of the city of New York."

Dated at the city of ..... (or as the case may be,) this ..... day of .....

'C. D.'
'Justice of the Peace.'
(Or as the case may be.)

(Amended by L. 1899, ch. 608. In effect Sept. 1, 1899.)

People ex rel. Farley v. Crane (1904), 94 App. Div. 400, 88 N. Y. Supp. 343.

§ 194. Depositions to be read on examination, and witnesses examined.

At the examination, the magistrate must, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information, and if the defendant request it, or elects to have the examination, must summon for cross-examination the witnesses so examined, if they be in the county. He must also issue subpœnas for additional witnesses required by the prosecutor or defendant.

People v. James (1896), 11 App. Div, 611, 43 N. Y. Supp. 315, 12 Crim. Rep. 196; Matter of Paul (1884), 2 Crim. Rep. 6, 94 N. Y. 502; People ex rel. Livingston v. Wyatt (1906), 113 App. Div. 115, 99 N. Y. Supp. 114; People ex rel. Farley v. Crane (1904), 94 App. Div. 400, 88 N. Y. Supp. 343.

§ 195. Examination of witnesses to be in presence of defendant, and witnesses to be cross-examined in his behalf.

The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

Matter of Paul (1884), 2 Crim. Rep. 6, 94 N. Y. 502.

§ 196. Defendant to be informed of his right to make a statement.

When the examination of the witnesses on the part of the people is closed, the magistrate must inform the defendant, that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him, if he sees fit, to answer the charge and to explain the facts alleged against him; that he is at liberty to waive

making a statement; and that his waiver cannot be used against him on the trial.

People v. Mondon (1886), 103 N. Y. 210, 4 Crim. Rep. 561; People v. James (1896), 11 App. 612, 43 N. Y. Supp, 315; People v. Chapleau (1890), 30 St. Rep. 992; People v. Haines (1888), 6 Crim. Rep. 108, 1 N. Y. Supp. 56; People v. Randazzio (1909), 194 N. Y. 147.

§ 197. Waiver of his right and its effect.

If the defendant waive his right to make a statement, the magistrate must make a note thereof, immediately following the depositions of the witnesses against the defendant.

People v. James (1896), 11 App. Div. 612, 43 N. Y. Supp. 315, 12 Crim. Rep. 196.

§ 198. Statement, how taken.

If the defendant choose to make a statement, the magistrate must proceed to take it in writing, without oath, and must put to the defendant the following questions only:

What is your name and age?

Where were you born?

Where do you reside, and how long have you resided there?

What is your business or profession?

Give any explanation you may think proper, of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

People v. Mondon (1886), 103 N. Y. 211, 4 Crim. Rep. 561; People v. James (1896), 11 App. Div. 612, 12 Crim. Rep. 196, 43 N. Y. Supp. 315; People v. McGloin (1882), 28 Hun 152, 1 Crim. Rep. 110; People v. Haines (1888), 6 Crim. Rep. 102, 1 N. Y. Supp. 56; People ex rel. Perkins v. Moss (1907), 187 N. Y. 448.

§ 199. Statement, how taken.

The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it must be corrected until it is made conformable to what he declares to be the truth.

People v. McGloin (1882), 28 Hun 152, 1 Crim. Rep. 110.

§ 200. How reduced to writing and authenticated.

The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following manner:

1. The authentication must set forth, in detail, that the defend-

ant was informed of his rights as provided in section one hundred and ninety-six, and that, after being so informed, he made the statement;

2. It must contain the questions put to him, and his answers thereto, as provided in sections one hundred and ninety-eight and one hundred and ninety-nine;

3. It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign, his reason therefor must be stated as he gives it;

4. It must be signed and certified by the magistrate.

La Farge v. Herter & Dillenbeck (1858), 9 N. Y. 241; People v. McGloin (1882), 28 Hun 152, 1 Crim. Rep. 110; People v. Chapleau (1890), 30 St. Rep. 992.

§ 201. After statement of waiver, defendant's witnesses to be examined.

After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, must be sworn and examined.

People v. James (1896), 11 App. Div. 612, 43 N. Y. Supp. 315, 12 Crim. Rep. 196.

§ 202. Witnesses to be kept apart.

The witnesses produced on the part either of the people or of the defendant cannot be present at the examination of the defendant; and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

People ex rel. Fleming v. Mayer (1903), 41 Misc. 292, 84 N. Y. Supp. 71.

§ 203. Who may be present at examination.

The magistrate may also exclude from the examination every person, except the clerk of the magistrate, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel and the officer having the defendant in custody.

People ex rel. Howee v. Grady (1892), 66 Hun 466, 144 N. Y. 685, 21 N. Y. Supp. 381, 50 St. Rep. 129; People ex rel. Livingston v. Wyatt (1906), 113 App. Div. 115, 99 N. Y. Supp. 114; People ex rel. Fleming v. Mayer (1903), 41 Misc. 292, 84 N. Y. Supp. 71.

§ 204. Testimony, how taken and authenticated.

The testimony given by each witness must be reduced to writing, as a deposition, by the magistrate or under his direction, and authenticated in the following manner:

1. The authentication must state the name and age of the witness, his place of residence, and his business or profession;

2. It must, unless deposition by question and answer be waived by the defendant and the witness, contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down and being corrected or added to, until it is made conformable to what he declares to be the truth;

3. If a question put be objected to on either side, and overruled, or the witness decline answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated;

4. The deposition must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it;

5. It must be signed and certified by the magistrate.

6. The foregoing provisions shall apply to preliminary examinations in the city and county of New York only when either the defendant or the district attorney, or the representative of the district attorney shall so elect.

Altman v. Hofeller (1897), 152 N. Y. 498; Matter of Ramsdale v. Supervisors (1896), 8 App. Div. 552, 40 N. Y. Supp. 840, 16 Misc. 215, 74 St. Rep. 603; Matter of Clinton (1896), 12 App. Div. 136, 42 N. Y. Supp. 674; People v. Hines (1901), 57 App. Div. 420, 68 N. Y. Supp. 276; People v. Giles (1896), 76 St. Rep. 749, 42 N. Y. Supp. 749; People v. Johnson (1887), 7 Crim. Rep. 402, 46 Hun 671, 110 N. Y. 134; People v. Zabor (1904), 44 Misc. 640, 90 N. Y. Supp. 412.

§ 205. Depositions and statement; how and by whom kept.

The magistrate or his clerk must keep the depositions taken on the information or on the examination, and the statement of the defendant, if any, until they are returned to the proper court; and must not permit them to be inspected by any person, except a judge of a court having jurisdiction of the offense, the attorney general, the district attorney of the county, and the defendant and his counsel, and the complainant and his counsel.

People v. Lytle (1896), 74 St. Rep. 719, 40 N. Y. Supp. 153; People v. Fuller (1901), 68 N. Y. Supp. 743; People v. Johnson (1886), 7 Crim. Rep. 405, 101 N. Y. 134; People ex rel. Livingston v. Wyatt (1906), 186 N. Y. 390, 113 App. Div. 115, 99 N. Y. Supp. 114.

§ 206. Defendant entitled to copies of depositions and statement.

If the defendant be held to answer the charge, the magistrate or his clerk having the custody of the depositions taken on the information or examination, and of the statement of the defendant, must, on payment of his fees at the rate of five cents for every hundred words, and within two days after demand, furnish to the defendant, or his counsel, a copy of the depositions and statement, or permit either of them to take a copy.

People ex rel. Livingston v. Wyatt (1906), 118 App. Div. 115, 99 N. Y. Supp. 114.

§ 207. Defendant, when and how to be discharged.

After hearing the proofs, and the statement of the defendant, if he have made one, if it appear, either that a crime has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

People ex rel. Brewing Co. v. Lyman (1900), 53 App. Div. 473; 65 N. Y. Supp. 1062; Matter of Ramscar (1882), 1 Crim. Rep. 35; Hunter v. Mutual Reserve Life Ins. Co. (1904), 97 App. Div. 222, 89 N. Y. Supp. 849; People ex rel. Murphy v. Crane (1903), Div. 203, 80 N. Y. Supp. 408; Beall v. Dadirrian (1909), 62 Misc. 125, 128, 115 N. Y. Supp. 196.

§ 208. When and how to be committed.

If, however, it appear from the examination that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner, indorse on the depositions and statement, an order, signed by him, to the following effect: "It appearing to me by the within depositions [and statement, if any] that the crime therein mentioned [or any other crime according to the fact, stating generally the nature thereof] has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same."

Wyman v. Ore (1900), 47 App. Div. 143, 62 N. Y. Supp. 195; Matter of Henry (1895), 13 Misc. 735, 35 N. Y. Supp. 210; People ex rel. Fleishman v. Fox (1901), *34 Misc.* 84, 69 N. Y. Supp. 545; Matter of Ramscar (1882), 1 Crim. Rep. 35; *People v. Bark (1884), 2* Crim. Rep. 65; People v. Johnson (1888), 7 Crim. Rep.

402, 46 Hun 671, 110 N. Y. 134; Matter of Baker (1904), 94 App. Div. 281, 87 N. Y. Supp. 1022; People ex rel. Murphy v. Crane (1903), 80 App. Div. 203, 80 N. Y. Supp. 408; People ex rel. Burnham v. Flynn (1906), 49 Misc. 330, 99 N. Y. Supp. 198; People v. Steinhardt (1905), 47 Misc. 252, 263, 93 N. Y. Supp. 1026; People v. Zabor (1904), 44 Misc. 640, 90 N. Y. Supp. 412; People ex rel. Voelpel v. Warden (1902), 37 Misc. 545, 546, 75 N. Y. Supp. 1114; People ex rel. Lanci v. O'Reilly (1909), 129 App. Div. 522, 524, 114 N. Y. Supp. 258; Beall v. Dedirrian (1909), 62 Misc. 125, 128, 115 N. Y. Supp. 196.

§ 209. Order for commitment.

If the crime be not bailable, the following words, or words to the same effect, must be added to the indorsement: "And that he be committed to the sheriff of the county of ," [or in the city and county of New York, "to the keeper of the city prison of the city of New York."]

§ 210. Certificate of bail being taken.

If the crime be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, must be added to the indorsement mentioned in section two hundred and eight: "And I have admitted him to bail to answer, by the undertaking hereto annexed."

People ex rel. Navagh v. Frink (1886), 41 Hun 195.

§ 211. Defendant to choose how he shall be tried.

If the crime with which the defendant is charged be one triable, as provided in subdivision thirty-seven* of section fifty-six, by a court of special sessions of the county in which the same was committed, the magistrate, before holding the defendant to answer, must inform him of his right to be tried by a court of special sessions, and must ask him how he will be tried. If the defendant shall not require to be tried by a court of special sessions, he can only be held to answer to a court having authority to inquire by the intervention of a grand jury into offenses triable in the county. (Amended by L. 1897, ch. 611. In effect Oct. 1, 1897.)

People v. Barry (1897), 16 App. Div. 465, 44 N. Y. Supp. 913, 12 Crim. Rep. 357; People v. McGann (1887), 43 Hun, 56; People v. Stark (1888), 17 St. Rep. 234, 1 N. Y. Supp. 721; Austin v. Vrooman (1891), 40 St. Rep. 339; People v. Burns (1897), 19 Misc. 682, 44 N. Y. Supp. 1106; People v. Burleigh (1883), 1 Crim. Rep. 524.

§ 212. Order for bail, on commitment.

If the crime be bailable and the defendant be admitted to bail,

*[So in original but should read thirty-eight.]—Ed.

but bail have not been taken, the following words, or words to the same effect, must be added to the indorsement mentioned in section two hundred and eight, "and that he be admitted to bail in the sum of dollars, and be committed to the sheriff of the county of ," [or in the city and county of New York, "to the keeper of the city prison of the city of New York,"] until he gives such bail.

§ 213. Form of commitment.

If the magistrate order the defendant to be committed, as provided in sections two hundred and nine and two hundred and twelve, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

People ex rel. Bungart v. Wells (1901), 57 App. Div. 143, 68 N. Y. Supp. 59.

§ 214. Form of commitment.

The commitment must be to the following effect:

"County of Albany [or as the case may be].

"In the name of the people of the State of New York:

"To the sheriff of the county of Albany" [or in the city and county of New York, "to the keeper of the city prison of the city and county of New York"].

"An order having this day been made by me, that A. B. be held to answer to the court of upon a charge of [stating briefly the nature of the crime], you are commanded to receive him into your custody, and detain him until he be legally discharged.

"Dated at the *City of Albany* [or as the case may be], this day of , 18 .

"C. D.,
"*Justice of the Peace.*"
[Or as the case may be.]

People v. Johnston (1888), 110 N. Y. 134, 16 St. Rep. 846; 7 Crim. Rep. 402; People ex rel. Sullivan v. Sloan (1899), 39 App. Div. 269, 56 N. Y. Supp. 930; People v. McGann (1884), 3 Crim. Rep. 8; People ex rel. Allen v. Hagan (1902), *170 N. Y.* 46, 52.

§ 215. Undertaking of witnesses to appear; when and how taken.

On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people, a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statement are to be sent, or that he will forfeit the sum of one hundred dollars.

People ex rel. Troy v. Pettit (1897), 19 Misc. 281, 44 N. Y. Supp. 256, 78 St. Rep. 256; People ex rel. Bolt v. Society (1905), 48 Misc. 175, 176, 95 N. Y. Supp. 250.

§ 216. Security for appearance of accomplice as witness.

When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness is an accomplice in the commission of the crime charged, he may order the witness to enter into a written undertaking with such sureties, and in such sum, as he may deem proper, for his appearance as specified in the last section.

People ex rel. Troy v. Pettit (1897), 44 N. Y. Supp. 256, 19 Misc. 281, 78 St. Rep. 256; People ex rel. Bolt v. Society (1905), 48 Misc. 175, 176, 95 N. Y. Supp. 250.

§ 217. Witness under sixteen.

Children under the age of sixteen years, when witnesses, may be committed as provided by sections four hundred and eighty-six and four hundred and eighty-seven of the penal law subject to the order of the trial court. (Amended by L. 1909, ch 66, § 5. In effect Feb. 17, 1909.)

People v. Rockhill (1893), 55 St. Rep. 682, 26 N. Y. Supp. 222; People ex rel. Bolt v. Society (1905), 48 Misc. 175, 176, 95 N. Y. Supp. 250.

§ 218. Witness to be committed on refusal to give security for appearance.

If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to prison until he comply or be legally discharged.

People ex rel. Troy v. Pettit (1897), 44 N. Y. Supp. 256, 78 St. Rep. 256; People ex rel. Bolt v. Society (1905), 48 Misc. 175, 176, 95 N. Y. Supp. 250.

§ 219. Witness may be conditionally examined on behalf of people.

A witness may be conditionally examined on behalf of the people in the manner and with the effect provided by title twelve, chapter three of this Code, for taking examination of witnesses conditionally on behalf of the defendant. A copy of the order and affidavit upon which the application is made, together with notice of the time and place where the examination is to be taken, shall be served on the defendant, and his counsel, if he have any, at least two days before the time fixed for such examination, and the defendant may be present personally upon such examination to confront the witness produced against him, if the defendant have no counsel the order shall contain a provision assigning counsel to him for the purpose of such examination, upon whom a copy of said order, affidavit and notice shall be served.

People v. Fish (1891), 8 Crim. Rep. 129; People v. Bromwich (1909), 135 App. Div. 67.

§ 220. Justices' criminal docket.

Every justice of the peace and every police or other special justice appointed or elected in a city, village or town other than in the city and county of New York, shall forthwith enter correctly at the time thereof, full minutes of all business done before him as such justice and as a court of special sessions in criminal actions and in criminal proceedings and including cases of felony, in a book to be furnished to him by the clerk of the city, village or town where he shall reside, and which shall be designated "justices' criminal docket," and shall be at all times open for inspection to the public. Such docket shall be and remain the property of the city, village or town of the residence of such justice, and at the expiration of the term of office of such justice, if in a city shall remain on file in the police office of such justice, or in the office of the police clerk, and if in a village or town shall be forthwith filed by him in the office of the clerk of such village or town. The minutes in every such docket shall state the names of the witnesses sworn and their places of residence, and if in a city, the street and house number; and every proceeding had before him. It shall be the duty of every justice of the peace and every police or other special justice in villages and towns, at least once a year and upon the last audit day of such village or town, to present his docket to the auditing board of said village or town, which board shall examine the said docket, and enter in the minutes of its proceedings the fact that such docket book has been duly examined, and that the fines therein collected have been turned over to the proper officials of the village or town as required by law. Any justice of the peace or police or other special justice who shall

wilfully fail to make and enter in such docket forthwith, the entries by this section required to be made or to exhibit such docket when reasonably required, or present his docket to the auditing board as herein required, shall be guilty of a misdemeanor and shall, upon conviction, in addition to the punishment provided by law for a misdemeanor forfeit his office. (Amended by L. 1910, ch. 268, in effect Sept. 1, 1910.)

People v. Fish (1891), 8 Crim. Rep. 129; In re Whyard, 106 N. Y. Supp. 401; People v. Zabor (1904), 44 Misc. 640, 90 N. Y. Supp. 412.

§ 221. Magistrate to return depositions, etc.

Whenever a magistrate has discharged a defendant, or has held him to answer, as provided in sections two hundred and seven and two hundred and eight, he must, within five days thereafter, return to the clerk of the supreme court or county court, or other court having power to inquire into the offenses by the intervention of a grand jury, the warrant, if any, the depositions, the statement of the defendant, if he have made one, and all undertakings of bail, or for the appearance of witnesses, taken by him. In the city of New York such return shall be made, in the case of all misdemeanors, except charges of libel, to the district attorney of the county wherein the offense charged was committed. Except in a county containing or wholly contained in a city of the first class, any such magistrate, within five days after so discharging or holding a defendant, must also return to the district attorney of the county a statement of the name and address of the defendant, the crime charged, the name and address of the informant, and the names and addresses of all of the witnesses subpœnaed or sworn upon the examination, or who have made depositions in support of the information.

Matter of Ramscar (1882), 1 Crim. Rep. 35; People v. Clark (1891), 6 Crim. Rep. 192; People v. Spier (1907), 120 App. Div. 787; People v. Zabor, (1904), 44 Misc. 636, 88 N. Y. Supp. 412; People v. Dillon (1910), 197 N. Y. 254, 260, 264, 265.

§ 221-a. Recognizances and other papers to be filed.

Every recognizance taken by any court, or by any magistrate, coroner or other officer, to appear and answer at any court, and the complaint, inquisition, affidavits and other papers upon which such recognizances is founded, shall be filed in the office of the clerk of the court at which the party is thereby recognized to appear, within ten days after the same is so taken. (Added by L. 1909, ch. 66, § 1. *In effect Feb. 17, 1909.*)

Derivation: *L. 1861, ch. 333, § 2.*

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT, AND BEFORE INDICTMENT.

CHAPTER I. Preliminary provisions.
II. Formation of the grand jury; its powers and duties.

CHAPTER I.

PRELIMINARY PROVISIONS.

SECTION 222. Crimes; how prosecuted.
222a. District attorney to issue precept to sheriff.
222b. Contents of precept.
222c. Duty of sheriff on receipt of precept.
222d. Persons not indicted to be discharged.

§ 222. Crimes; how prosecuted.

All crimes prosecuted in the supreme court, or in a county court, or in a city court, must be prosecuted by indictment. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

People v. Warden, 112 N. Y. Supp. 493.

§ 222-a. District attorney to issue precept to sheriff.

The district attorney of every county, at least twenty days before the time appointed for the holding of a trial term of the supreme court in his county, shall issue a precept to be tested and sealed, in the same manner as process issued out of the supreme court, and to be directed to the sheriff of his county. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 206, § 37.

§ 222-b. Contents of precept.

Every such precept shall mention the time and place at which such court is to be held, and shall command the said sheriff:

1. To summon the several persons who shall have been drawn in his county, pursuant to law, to serve as grand and petit jurors *at the said court,* to appear thereat;

2. To bring before the said court, all prisoners then being in the jail of such county, together with all process and proceedings any way concerning them in the hands of such sheriff;

3. To make proclamation in the manner prescribed by law notifying all persons bound to appear at the said court, by recognizance, or otherwise, to appear thereat; and requiring all justices of the peace, coroners, and other officers who have taken any recognizance for the appearance of any person at such court, or who have taken any inquisition, or the examination of any prisoner or witness, to return such recognizances, inquisitions and examinations, to the said court, at the opening thereof, on the first day of its sitting. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 206, § 38.

§ 222-c. Duty of sheriff on receipt of precept.

The sheriff to whom any such precept shall be directed and delivered, immediately on the receipt thereof, shall cause a proclamation in conformity thereto, signed by him, to be published once in each week, until the sitting of the court, in one or more of the newspapers printed in the said county. The expense of such publication shall be a county charge. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 206, § 39.

§ 222-d. Persons not indicted to be discharged.

Within twenty-four hours after the discharge of any grand jury by any supreme or county court, the court shall cause every person confined in jail on a criminal charge, who shall not have been indicted, to be discharged without bail, unless satisfactory cause shall be shown for his further detention, or if the case may require, upon bail, until the meeting of the next grand jury in the county. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: County Law, L. 1892, ch. 686, § 98.

CHAPTER II.

FORMATION OF THE GRAND JURY, ITS POWERS AND DUTIES.

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§ 223. Grand jury defined.

A grand jury is a body of men, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, and chosen by lot, and sworn to inquire of crimes committed or triable in the county.

People v. Petrea (1883), 30 Hun 102; People v. Scannell (1902), 37 Misc. 845, 857, 75 N. Y. Supp. 500; Matter of Osborne (1909), 62 Misc. 575, 578, 117 N. Y. Supp. 169.

§ 224. Grand jury defined.

The grand jury must consist of not less than sixteen and not more than twenty-three persons, and the presence of at least sixteen is necessary for the transaction of any business.

People v. Thomas (1900), 32 Misc. 174, 66 N. Y. Supp. 191.

§ 225. Grand jury, for what courts drawn, et cetera.

A grand jury must be drawn for every term of the following courts:

1. The supreme court, except in the city and county of New York, and the county of Kings, and except for extraordinary or adjourned terms, and except for a term thereof for which a trial jury is not required to be drawn. But whenever in any other county than New York and Kings, more than four terms of the supreme court shall be appointed to be held in any year, the justices of the supreme court, or a majority of them, of the district in which said county is situated may designate four terms of the supreme court in said county for which a grand jury shall be drawn, and a grand jury shall attend at such terms only; and

2. The court of general sessions of the city and county of New York, and the county court of the county of Kings. (Amended by L. 1895, ch. 880; L. 1908, ch. 49. In effect Sept. 1, 1908.)

People v. Rugg (1885), 98 N. Y. 537, 3 Crim. Rep. 176; People v. McKane (1894), 80 Hun 326, 62 St. Rep. 7, 30 N. Y. Supp. 95; People v. Scannell (1902), 37 Misc. 845, 849, 75 N. Y. Supp. 500.

§ 226. Idem.

A grand jury may also be drawn:

1. For every other county court, when specially ordered by the court or by the board of supervisors.

2. For the supreme court in the city and county of New York, upon the order of a justice of the supreme court, elected in the first judicial district.

3. For the supreme court, of the county of Kings, upon the order of a justice of the supreme court, elected in the second judicial district.

4. For an extraordinary term of the supreme court or a term thereof for which a trial jury is not required to be drawn, upon the order of the justice named to hold or preside at the same.

5. For any term of the court of general sessions of the city and county of New York upon the order of a judge of the court of general sessions, whenever the public interest requires such additional grand jury. (Amended by L. 1895, ch. 880; L. 1907, ch. 615; L. 1908, ch. 49. In effect Sept. 1, 1908.)

People v. Rugg (1885), 98 N. Y. 537, 3 Crim. Rep. 178; People v. McKane (1894), 80 Hun 326, 30 N. Y. Supp. 195.

§ 227. For what courts to be drawn; the order.

If made by the court or a judge thereof, the order for a grand

jury must be entered upon its minutes, and a copy thereof filed with the county clerk at least twenty days before the term for which the jury is ordered. If made by the board of supervisors a copy thereof, certified by the clerk of the board, must be filed with the county clerk, at least twenty days before the term; and when so filed, is conclusive evidence of the authority for drawing the jury.

People v. Rugg (1885), 8 Crim. Rep. 178, 98 N. Y. 537; People v. Farmer (1909), 194 N. Y. 268; People v. Scannell (1902), 37 Misc. 845, 849, 75 N. Y. Supp. 500.

§ 228. Misdescription in order.

A misdescription of the title of the court in an order for a grand jury does not affect the validity of the order, if it can be plainly understood therefrom what court is intended.

§ 229. Mode of selecting grand jurors.

The mode of selecting grand jurors is prescribed by special statutes. (Amended by L. 1909, ch. 66, § 5, L. 1909, ch. 419. In effect May 21, 1909.)

People v. Duff (1888), 1 Crim. Rep. 312.

§ 229-a. List of grand jurors, except in New York county.

Unless otherwise specially provided by law, the supervisors of the several counties of this state, except the county of New York, at their annual meetings in each year, shall prepare a list of the names of three hundred persons, to serve as grand jurors at the terms of the supreme court and county courts, to be held in their respective counties during the then ensuing year and until new lists shall be returned. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 720, § 1, as amended by L. 1896, ch. 574, § 1.

§ 229-b. Qualifications of persons to be placed on list of grand jurors.

In preparing such lists the said boards of supervisors shall select such persons only, whose names appear upon the last assessment-roll of the town or ward, as they know, or have good reason to believe, are possessed of the qualifications by law required of persons to serve as jurors for the trial of issues of fact, and are

of approved integrity, fair character, sound judgment and well informed. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 720, § 3, as amended by L. 1890, ch. 156, § 1.

§ 229-c. Persons exempt from serving on trial juries not to be placed on list of grand jurors.

Persons exempt by law from serving as jurors for the trial of issues of fact, shall not be placed on any list of grand jurors, required by the preceding provisions. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 720, § 4.

§ 229-d. Contents of grand jurors' list and its certification and filing.

The list so made out by the said boards of supervisors shall contain the christian and surnames, at length, of the persons named therein, their respective places of residence, and their several occupations; it shall be certified by the clerk of the board of supervisors and shall be filed in the office of the clerk of the county on or before the tenth day of December in each year. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 721, § 5, as amended by L. 1896, ch. 84, § 1.

§ 229-e. Duty of county in preparing grand jurors' ballots.

On receiving such list the county clerk shall write the names of the persons contained therein, with their additions and places of residence, on separate pieces of paper, and shall roll up or fold such pieces of paper, each in the same manner as near as may be, so that the name written therein shall not be visible, and shall deposit such pieces of paper in a sufficient box from which they shall be drawn as hereinafter provided. If, from any cause, such box or the pieces of paper containing the names of jurors so deposited therein shall be lost or destroyed, the county clerk, in whose office such loss or destruction shall happen, shall forthwith provide a new box and again write the names of the persons contained in the list, so filed in his office, on separate pieces of paper and roll up or fold the same in the same manner as hereinbefore directed, and deposit the same in the box so pro-

vided by him. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 721, § 6, as amended by L. 1880, ch. 122, § 1.

§ 229-f. Increasing the number of grand jurors to be returned.

If the county judge of any county of this state, except the county of New York, shall at any time be of opinion that a greater number of persons than that therein required, should be returned to serve as grand jurors in their county, he may, by an order under his hand, direct such number to be increased; but such increase shall not exceed one-half the number herein required to be selected for such county. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 721, § 8.

§ 229-g. Supervisors to increase the number of grand jurors to be returned.

Upon any order which is authorized by the last section being served upon the board of supervisors, they shall at their next annual meeting, increase the number of persons returned by them to serve as grand jurors, pursuant to such order. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 721, § 9.

§ 229-h. Time and method of drawing grand jury.

At the time of drawing the names of jurors for the trial of issues of fact, in any term of the supreme court or county court, the county clerk, in the presence and with the assistance of the sheriff or under sheriff, and of the county judge, or, in case of his absence or illness, of the special county judge, or, in a county where there is no special county judge, of the surrogate or of a justice of the supreme court residing in such county, who shall have attended for the purpose of drawing the trial jury for such court, shall proceed and draw the names of twenty-four persons, from the box in which the pieces of paper shall have been deposited for that purpose, to serve as grand jurors at such term of the supreme court, or county court as the case may be. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 721, § 10, as amended by L. 1841, ch. 332, § 1; L. 1896, ch. 574, § 1.

§ 229-i. Manner of drawing grand jury.

Such drawing shall be conducted in all respects, in the manner prescribed by law for drawing trial jurors; a minute of such drawing shall be kept, signed and filed in the like manner; and a list of the persons so drawn, with their additions and places of residence, and specifying for what court they shall have been drawn, shall be made and certified by the clerk and the attending officers, and shall be delivered to the sheriff of the county. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 722, § 11.

§ 229-j. Sheriff to summon grand jurors.

The sheriff shall summon the persons named in such list, to attend such court as grand jurors, at least six days previous to the sitting of such court, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age. He shall return such list to the court at the opening thereof, specifying those who were summoned, and the manner in which each person was notified. (Added by L. 1909, ch 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 722, § 12.

§ 229-k. Fine to be imposed on grand jurors for neglect to attend.

The court to which any list of grand jurors so drawn shall be returned by the sheriff, shall impose a fine not exceeding twenty-five dollars, for each day that any person duly summoned as a grand juror shall, without reasonable cause, neglect to attend. But if it appear that any such person was notified by leaving a written notice at his place of residence, the court shall suspend such fine, until the defaulting grand juror shall be notified, as provided by law. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 722, § 13.

§ 229-l. Discharge of person from serving as grand juror.

The court may discharge any person from serving as a grand juror, in the same cases, in which trial jurors may by law be discharged. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: *2 R. S. 722, § 14.*

§ 229-m. Name of grand juror, who does not attend or is excused, to be returned to ballot box.

When any person drawn as a grand juror, shall not attend the court for which he was drawn, or shall be excused for the term only, his name shall be returned into the box of undrawn ballots for that year. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 722, § 15.

§ 229-n. Grand juror attending not required to serve again during year.

When any person drawn as a grand juror, shall have attended and performed his duty as such at any court, the ballot containing his name shall be destroyed, and he shall not be again required to serve as a grand juror during the year for which his name was returned. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 722, § 16.

§ 229-o. Ballot containing name to be destroyed if grand juror is discharged on account of disqualification.

When any person drawn as a grand juror, shall be discharged by the court, or excused from attending, on account of any disqualification, or for any other cause not being of a temporary nature, the ballot containing his name shall be destroyed. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 722, § 17.

§ 229-p. Person drawn as grand juror and as trial juror, for the same term, to serve as grand juror.

When the same person shall be drawn as a grand juror and as a trial juror, to attend the same court, his name shall be omitted from the list of trial jurors, and another name shall be drawn from the box containing the names of persons returned to serve as trial jurors; and after the completion of the drawing of the trial jurors, the name of such person drawn for the grand jury, shall be returned into the box containing the undrawn names of trial jurors. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 722, § 18.

§ 229-q. If new list of grand jurors is not returned to county clerk, drawing to be made from those on old list.

If any new list of persons to serve as grand jurors, shall not be returned to the county clerk, before he shall have completed the drawing of the grand jurors for any court, he shall proceed to draw grand jurors in the manner herein provided, from the box containing the names of those already returned for that purpose, notwithstanding they may have been returned for a year then expired, or which will expire before the end of the term or sitting of the court for which they shall be drawn; and such persons shall be summoned and shall serve in the same manner, and be subject to the same penalties for neglect, as if such year had not expired. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 728, § 19.

§ 229-r. Proceedings when less than fifty names remain in the grand juror's box.

When it shall appear upon the representation of a county clerk, that there are less than fifty names remaining in the box containing the names of persons returned to serve as grand jurors, the judge of the county court may select from the citizens of the county qualified to serve as grand jurors, and who shall not have served during the preceding twelve months, the names of fifty persons, to serve as grand jurors.

Such names shall be certified to the county clerk, who shall file such certificate in his office, and shall cause such names to be written on distinct pieces of paper, and deposited in the box containing any undrawn names of persons returned to serve as grand jurors, or if there be none, then in a proper box; and from such box, in either case, the clerk shall draw a grand jury to serve for any court to be held immediately after such drawing.

Such drawing shall be made at the time, and in the same manner, in all respects, as herein provided in respect to persons returned by the supervisors, and the persons drawn shall be summoned in like manner, and subject to the same penalties for neglect. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 728, §§ 20-22.

§ 230. If sixteen grand jurors do not appear, etc.

If at any term of the supreme court or county court, except in the counties of Genesee, Orleans, and Saint Lawrence, there shall not appear at least sixteen persons, duly qualified to serve as grand jurors, who have been summoned, or if the number of grand jurors attending shall be reduced below sixteen, such court must, by order to be entered in its minutes, require the clerk of the county to draw, and the sheriff to summon, such additional number of grand jurors as shall be necessary, and must specify the number required in the order. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

§ 231. Manner of designating the additional grand jurors.

The clerk of the county must forthwith bring into the court the box containing the names of the grand jurors, from which grand jurors in the county are required to be drawn; and he must, in the presence of the court, proceed publicly to draw the number of grand jurors specified in the order; and when such drawing is completed, he must make two lists of the persons so drawn, each of which must be certified by him to be a correct list of the names of the persons so drawn by him, one of which he must file in his office, and the other he must deliver to the sheriff.

§ 232. Manner of designating the additional grand jurors.

The sheriff must accordingly, in the manner required in respect to the grand jurors originally drawn, forthwith summon the persons whose names are drawn or designated in the list, provided in section two hundred and thirty-one, to appear in the court requiring their attendance at the time designated, and they must attend and serve as if they had been originally summoned as grand jurors, and subject to the same penalties, unless excused or discharged by the court.

§ 233. Manner of designating the additional grand jurors.

In the counties of Genesee, Orleans and St. Lawrence, the names of the persons required to complete the grand jury may in the discretion of the court, be drawn as provided in the last section, or may be publicly designated by the court, from the bystanders or the body of the county.

§ 234. Summoning the additional grand jurors, and compelling their attendance.

The sheriff must accordingly, in the manner required in respect to the grand jurors originally drawn, forthwith summon the persons whose names are drawn or designated, as provided in the last two sections, who must attend and serve as if they had been originally summoned as grand jurors, and are subject to the same penalties, unless excused or discharged by the court.

§ 235. When new grand jury may be summoned for the same court.

If a crime be committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered, that the sheriff summon another grand jury; and the same shall be summoned, in the manner prescribed for grand juries in general.

People v. Farmer (1909), 194 N. Y. 251.

§ 236. Grand jury, how drawn when more than a sufficient number attends.

When more than twenty-three persons summoned as grand jurors attend for service, the clerk must prepare separate ballots containing their names, folded as nearly alike as possible, and so that the names cannot be seen, and must deposit them in a box, He must then openly draw out of the box twenty-three ballots; and the persons whose names are drawn constitute the grand jury. The names remaining in the box, as well as those drawn, must be returned to the box of drawn grand jurors.

People v. Scannell (1902), 37 Misc. 345, 349, 75 N. Y. Supp. 500.

§ 237. Who may challenge an individual grand juror.

The district attorney in behalf of the people and also a person held to answer a charge for a crime may challenge an individual grand juror. (Amended by L. 1892, ch. 279. In effect Sept. 1, 1892.)

People v. Nugent (1901), 57 App. Div. 544, 67 N. Y. Supp. 1035; People v. Borgstorm (1904), 178 N. Y. 257.

§ 238. Causes of discharge of the panel.

There is no challenge allowed to the panel or to the array of the

grand jury, but the court may, in its discretion, at any time discharge the panel and order another to be summoned, for one or more of the following causes:

1. That the requisite number of ballots was not drawn from the grand jury box of the county;

2. That notice of the drawing of the grand jury was not given;

3. That the drawing was not had, in the presence of the officers designated by law; and

4. That the drawing was not had, at least fourteen days before the court.

People v. Hooghkerk (1884), 96 N. Y. 149, 2 Crim. Rep. 204; People v. Nugent (1901), 57 App. Div. 544, 67 N. Y. Supp. 1035; People v. Petrea (1883), 30 Hun 102, 112, 114, 1 Crim. Rep. 204, 244; People v. Fitzpatrick (1883), 30 Hun 496, 1 Crim. Rep. 430; People v. Duff (1883), 1 Crim. Rep. 318; People v. Farmer (1909), 194 N. Y. 251; People v. Borgstorm (1904), 178 N. Y. 257; People v. Scannell (1902), 37 Misc. 345, 352, 75 N. Y. Supp. 500.

§ 239. Causes of challenge to an individual grand juror.

A challenge to an individual grand juror may be interposed for one or more of the following causes, and for these only:

1. That he is a minor;

2. That he is an alien;

3. That he is insane;

4. That he is the prosecutor upon a charge against the defendant;

5. That he is a witness for either party, if the court is satisfied in the exercise of a sound discretion that he cannot act impartially and without prejudice to the substantial rights of the party challenging. (Amended by L. 1892, ch. 279. In effect Sept. 1, 1892.

6. That a state of mind exists on his part, in reference to the case or to either party, which satisfies the court, in the exercise of sound discretion, that he cannot act impartially and without prejudice to the substantial rights of the party challenging.

People v. Hooghkerk (1884), 96 N. Y. 149, 2 Crim. Rep. 204; People v. Nugent (1901), 57 App. Div. 544, 67 N. Y. Supp. 1035; People v. Petrea (1882), 30 Hun 102, 114, 1 Crim. Rep. 217; People v. Scannell (1902), 37 Misc. 345, 352, 75 N. Y. Supp. 500.

§ 240. Manner of taking and trying the challenges.

Challenges to individual grand jurors may be oral, and must

be entered upon the minutes, and tried by the court in the same manner as challenges in the case of a trial jury.

People v. Nugent (1901), 57 App. Div. 544, 67 N. Y. Supp. 1085.

§ 241. Decision upon the challenge.

The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

People v. Nugent (1901), 57 App. Div. 544, 67 N. Y. Supp. 1085.

§ 242. Effect of allowing a challenge to an individual grand juror.

If a challenge to an individual grand juror be allowed for any of the causes mentioned in subdivisions one, two or three of section two hundred and thirty-nine, he must be forthwith discharged from the grand jury. If such challenge be allowed for any of the causes mentioned in subdivisions four, five or six of section two hundred and thirty-nine, the juror challenged cannot be present at or take part in the consideration of the charge against the defendant mentioned in or who interposed the challenge, or in the deliberations or vote of the grand jury thereon. (Amended by L. 1892, ch. 279. In effect Sept. 1, 1892.)

People v. Nugent (1901), 57 App. Div. 544, 67 N. Y. Supp. 1085; People v. Bork (1884), 31 Hun 374, 2 Crim. Rep. 78.

§ 243. Violation of last section.

The grand jury must inform the court of a violation of the last section, and the same is punishable by the court as a contempt.

People v. Bork (1884), 31 Hun 374, 2 Crim. Rep. 78; People v. Oyer & Terminer (1885), 3 Crim. Rep. 216.

§ 244. Appointment of foreman.

From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman when a person already appointed is discharged or excused before the grand jury are dismissed.

§ 245. Oath of the foreman and the other grand jurors.

The following oath must be administered to the foreman of the *grand jury:* "You, as foreman of this grand jury, shall diligently

inquire and true presentment make, of all such matters and things as shall be given you in charge; the counsel of the people of this state, your fellows' and your own you shall keep secret; you shall present no person from envy, hatred or malice; nor shall you leave anyone unpresented through fear, favor, affection or reward, or hope thereof; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God."

People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 848, 55 N. Y. Supp. 472; People v. Petrea (1883), 1 Crim. Rep. 214; People v. Duff (1883), 1 Crim. Rep. 312; People v. Steinhardt (1905), 47 Misc. 252, 256, 93 N. Y. Supp. 1026; Matter of Osborne (1909), 62 Misc. 575, 578, 117 N. Y. Supp. 169.

§ 246. Oath of the foreman and the other grand jurors.

The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God."

§ 247. Oath of the foreman and the other grand jurors.

If, after the foreman and the grand jurors then present are sworn, any other grand juror appear, and be admitted as such, the oath, as prescribed in section two hundred and forty-five, must be administered to him, commencing, "You, as one of this grand jury," and so on, to the end.

§ 248. Charge of the court.

The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must read to them the provisions of this Code, from section two hundred and fifty-two to section two hundred and sixty-seven, both inclusive, or give them a copy thereof, and must give them such information as it may deem proper, as to the nature of their duties, and any charges and crimes returned to the court, or likely to come before the grand jury. The court need not, however, charge them respecting violations of a particular statute, excepting when so requested by the district attorney. (Amended by L. 1892, ch. 279. In effect Sept. 1, 1892.)

People v. Glen (1901), 64 App. Div. 174, 71 N. Y. Supp. 898.

§ 249. Retirement of the grand jury.

The grand jury must then retire to a private room and inquire into the offenses cognizable by them.

People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 348, 55 N. Y. Supp. 472.

§ 250. Appointment of a clerk, and his duties.

The grand jury must appoint one of their number as clerk, who is to preserve minutes of their proceedings (except of the votes of the individual members on a presentment or indictment), and of the evidence given before them.

Matter of Montgomery (1908), 126 App. Div. 73, 110 N. Y. Supp. 793; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630; People v. Klaw (1907), 58 Misc. 159, 104 N. Y. Supp. 482; People v. Steinhardt (1905), 47 Misc. 252, 255, 93 N. Y. Supp. 1026.

§ 251. Discharge of the grand jury.

The grand jury, on the completion of the business before them, must be discharged by the court; but whether the business be completed or not, they are discharged by the final adjournment of the court.

People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp: 630.

§ 252. Power of grand jury to inquire into crimes, etc.

The grand jury has power, and it is their duty, to inquire into all crimes committed or triable in the county, and to present them to the court.

People ex rel. Burr v. Feitner (1901), 59 App. Div. 233, 69 N. Y. Supp. 574; People v. Equitable Gas Light Co. (1888), 6. Crim. Rep. 191; People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 348, 55 N. Y. Supp. 472; People v. Molineux (1899), 26 Misc. 590, 57 N. Y. Supp. 643; People v. Glen (1903), 173 N. Y. 401; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 601, 94 N. Y. Supp. 1037, aff'd 184 N. Y. 30; People v. Diamond (1902), 72 App. Div. 281, 283, 76 N. Y. Supp. 57; Matter of Osborne (1909), 62 Misc. 575, 578, 117 N. Y. Supp. 169.

§ 253. Foreman may administer oaths.

The foreman may administer an oath to any witness appearing before the grand jury.

People v. Glen (1903), 173 N. Y. 401; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630.

§ 254. Definition of an indictment.

An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a crime.

People v. Klipfel (1899), 160 N. Y. 374; People v. Sumner (1898), 33 App. Div. 347, 53 N. Y. Supp. 817; People v. Stark (1891), 59 Hun 58, 35 St. Rep. 155, 12 N. Y. Supp. 692; People v. Flaherty (1894), 79 Hun 50, 9 Crim. Rep. 256, 29 N. Y. Supp. 641, 61 St. Rep. 198; People v. Jeffrey (1891), 38 St. Rep. 315, 14 N. Y. Supp. 839; People v. Dumar (1887), 8 Crim. Rep. 269; People v. Glen (1903), 173 N. Y. 401; Matter of Jones (1905), 101 App. Div. 62, 92 N. Y. Supp. 275.

§ 255. Evidence receivable before the grand jury.

In the investigation of a charge, for the purpose of indictment, the grand jury can receive no other evidence than:

1. Such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence; or

2. The deposition of a witness, in the cases mentioned in the third subdivision of section eight.

People v. Brickner (1891), 15 N. Y. Supp. 530; People v. Price (1888), 6 Crim. Rep. 144; Matter of Gardiner (1900), 31 Misc. 372, 64 N. Y. Supp. 760; People v. Glen (1903), 173 N. Y. 401; People v. Dundon (1906), 113 App. Div. 370, 98 N. Y. Supp. 1048; People v. Klaw (1907), 53 Misc. 159, 104 N. Y. Supp. 482; People v. Sexton (1903), 42 Misc. 312, 86 N. Y. Supp. 517.

§ 256. Evidence receivable before the grand jury.

The grand jury can receive none but legal evidence.

People v. Glen (1901), 64 App. Div. 174, 71 N. Y. Supp. 893; People v. Brickner (1891), 15 N. Y. Supp. 530; People v. Price (1888), 6 Crim. Rep. 144, 53 Hun 185; People v. Farrell (1897), 20 Misc. 213, 12 Crim. Rep. 310, 45 N. Y. Supp. 911, People v. Lindenborn (1898), 23 Misc. 428, 52 N. Y. Supp. 101; People v. Willis (1898), 23 Misc. 570, 52 N. Y. Supp. 808; People v. Molineux (1899), 27 Misc. 81, 14 Crim. Rep. 6, 58 N. Y. Supp. 155; Matter of Gardiner (1900), 31 Misc. 372, 64 N. Y. Supp. 760; People v. Thomas (1900), 32 Misc. 171, 66 N. Y. Supp. 191; People v. Sexton (1907), 187 N. Y. 511; People v. Glen (1903), 173 N. Y. 395, 401; People v. Wolf (1903), 107 App. Div. 449, 456, 95 N. Y. Supp. 264; People v. Cravath (1908), 58 Misc. 154, 110 N. Y. Supp. 454; People v. Klaw (1907), 53 Misc. 159, 104 N. Y. Supp. 482; People v. Bills (1904), 44 Misc. 349, 89 N. Y. Supp. 1091.

§ 257. Grand jury not bound to hear evidence for the defendant, but may order explanatory evidence to be produced.

The grand jury is not bound to hear evidence submitted for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other

evidence, within their reach, will explain away the charge, they should order such evidence to be produced; and for that purpose may require the district attorney to issue process for the witnesses.

People v. Singer (1886), 5 Crim. Rep. 2; People v. Glen (1908), 173 N. Y. 401; People v. Acritelli (1908), 57 Misc. 574, 110 N. Y. Supp. 430.

§ 258. Degree of evidence, to warrant an indictment.

The grand jury ought to find an indictment, when all the evidence before them, taken together, is such as in their judgment would, if explained or uncontradicted, warrant a conviction by the trial jury.

People v. Brickner (1891), 15 N. Y. Supp. 530; People v. Price (1889), 6 Crim. Rep. 144, 58 Hun 185; People v. Vaughn (1897), 19 Misc. 299, 11 Crim. Rep. 388, 42 N. Y. Supp. 959; People v. Farrell (1897), 20 Misc. 214, 12 Crim. Rep. 310, 45 N. Y. Supp. 911; People v. Willis (1898), 23 Misc. 570; 52 N. Y. Supp. 808; People v. Winant (1898), 24 Misc. 363, 53 N. Y. Supp. 695; People v. Molineux (1899), 27 Misc. 63, 14 Crim. Rep. 6, 57 N. Y. Supp. 986; People v. Stern (1900), 33 Misc. 457, 68 N. Y. Supp. 782; People v. Sexton (1907), 187 N. Y. 511; People v. Glen (1903), 173 N. Y. 395, 402 ; People v. Acritelli (1908), 57 Misc. 574, 110 N. Y. Supp. 430; People v. Klaw (1907), 53 Misc. 159, 104 N. Y. Supp. 482; People v. Booth (1907), 52 Misc. 343, 102 N. Y. Supp. 62; People v. Steinhardt (1905), 47 Misc. 252, 263, 93 N. Y. Supp. 1026.

§ 259. Grand jurors must declare their knowledge as to commission of a crime.

If a member of the grand jury know, or have reason to believe, that a crime has been committed, which is triable in the county, he must declare the same to his fellow jurors, who must thereupon investigate the same.

People ex rel. Livingston v. Wyatt (1906), 186 N. Y. 392; People v. Glen (1903), 173 N. Y. 401; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 601, 94 N. Y. Supp. 1037.

§ 260. Grand jury must inquire as to persons imprisoned on criminal charges and not indicted; the condition of public prisons, and the misconduct of public officers.

The grand jury must inquire:

1. Into the case of every person imprisoned in the jail of the county on a criminal charge, and not indicted;

2. Into the condition and management of the public prisons in *the county; and*

3. Into the willful and corrupt misconduct in office of public officers of every description in the county.

People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 348, 55 N. Y. Supp. 472; People v. Glen (1903), 173 N. Y. 401; Matter of Jones (1905), 101 App. Div. 55, 92 N. Y. Supp. 275; People v. Tatum (1908), 60 Misc. 315; Matter of Osborne (1909), 62 Misc. 575, 578, 117 N. Y. Supp. 169; People v. Tillman (1909), 63 Misc. 461, 469, 118 N. Y. Supp. 442.

§ 261. Grand jury entitled to access to public prisons, and to examine public records.

They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records in the county.

People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 348, 55 N. Y. Supp. 472, 13 Crim. Rep. 406; People v. Glen (1903), 173 N. Y. 401; Matter of Jones (1905), 101 App. Div. 55, 92 N. Y. Supp. 275.

§ 262. When and from whom they may ask advice, and who may be present during their sessions.

The grand jury may, in any case, ask the advice of any judge of the court, or of the district attorney of the county.

People v. Lytle (1896), 7 App. Div. 569, 74 St. Rep. 724, 40 N. Y. Supp. 153; People ex rel. Gardiner v. Olmstead (1898), 25 Misc 348, 55 N. Y. Supp. 472; Matter of Gardiner (1900), 31 Misc. 870, 64 N. Y. Supp. 760; People v. Kramer (1900), 33 Misc. 217; 68 N. Y. Supp. 283; People v. Scannell (1901), 36 Misc. 41, 73 N. Y. Supp. 1067; People v. Glen (1903), 173 N. Y. 401; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 606, 94 N. Y. Supp. 1037; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630, 110 N. Y. Supp. 433; People v. Bills (1904), 44 Misc. 350, 89 N. Y. Supp. 1091; People v. Klaw (1906), 53 Misc. 160, 104 N. Y. Supp. 482; People v. Scannell, (1902), 37 Misc. 345, 347, 75 N. Y. Supp. 500.

§ 263. When and from whom they may ask advice, and who may be present during their sessions.

Whenever required by the grand jury, it shall be the duty of the district attorney of the county to attend them for the purpose of examining witnesses in their presence, or of giving them advice upon any legal matter, and of issuing subpœnas or other process for witnesses.

People v. Lytle (1896), 7 App. Div. 569, 74 St. Rep. 724, 40 N. Y. Supp. 153; People ex rel. Gardiner v. Olmstead (1898), 25 Misc. 348; 55 N. Y. Supp. 472; Matter of Gardiner (1900), 31 Misc. 870, 64 N. Y. Supp. 760; People v. Kramer (1900), 33 Misc. 217, 68 N. Y. Supp. 283; People v. Scannell (1901), 36 Misc. 41, 73 N. Y. Supp. 1067; People v. Glen (1903), 173 N. Y. 401; People ex rel.

Hummel v. Davy (1905), 105 App. Div. 598, 606, 94 N. Y. Supp. 1087; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630, 110 N. Y. Supp. 433; People v. Klaw (1907), 53 Misc. 160, 104 N. Y. Supp. 482; People v. Scannell (1902), 37 Misc. 845, 847, 75 N. Y. Supp. 500.

§ 264. When and from whom they may ask advice, and who may be present during their sessions.

The district attorney of the county, an assistant district attorney, or in the county of New York an attorney regularly in the employ of the district attorney of the said county, who shall be under salary paid by the said county, and who shall have filed in the office of the county clerk of the said county the constitutional oath of office, or in counties having no assistant district attorney an attorney appointed by a justice of the supreme court upon the nomination of the district attorney to attend upon the grand jury, must be allowed, at all times, to appear before the grand jury, at his request, for the purpose of giving information relative to any matter before them, but no district attorney, officer or other person shall be present with the grand jury during the expression of their opinions, or the giving of their votes upon any matter. (Amended by L. 1905, ch. 286; L. 1907, ch. 615. In effect Sept. 1, 1907.)

People v. Lytle (1896), 7 App. Div. 569, 74 St. Rep. 722, 724, 40 N. Y. Supp. 158; People v. Glen (1908), 173 N. Y. 401; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 606, 94 N. Y. Supp. 1087; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630; People v. Acritelli (1908), 57 Misc. 574, 110 N. Y. Supp. 430; People v. Bills (1904), 44 Misc. 350, 89 N. Y. Supp. 1091; People v. Klaw (1907), 53 Misc. 160, 104 N. Y. Supp. 482; People v. Scannell (1902), 37 Misc. 845, 847, 75 N. Y. Supp. 500.

§ 265. Secrets of the grand jury to be kept.

Every member of the grand jury must keep secret whatever he himself, or any other grand juror, may have said, or in what manner he, or any other grand juror, may have voted, on a matter before them.

People v. Neidhart (1901), 35 Misc. 191, 71 N. Y. Supp. 591; People v. Glen (1908), 173 N. Y. 401; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630; People v. Klaw (1907), 53 Misc. 160, 104 N. Y. Supp. 482.

§ 266. Grand jury, when bound to disclose the testimony of a witness.

A member of the grand jury may, however, be required by any *court, to disclose* the testimony of a witness examined before the

grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court; or to disclose the testimony given before them by any person upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

People v. Glen (1903), 178 N. Y. 401; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630; People v. Klaw (1907), 58 Misc. 160, 104 N. Y. Supp. 482; People v. Steinhardt (1905), 47 Misc. 252, 256, 93 N. Y. Supp. 1026.

§ 267. Grand juror not to be questioned for his conduct as such.

A grand juror cannot be questioned for anything he may say, or any vote he may give, in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

People v. Glen (1903), 178 N. Y. 401; People v. Bissert, (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630.

TITLE V.

OF THE INDICTMENT.

CHAPTER I. Finding and presentation of the indictment.
II. Form of the indictment.
III. Amendment of the indictment.
IV. Arraignment of the defendant.
V. Setting aside the indictment.
VI. Demurrer.
VII. Plea.
VIII. Removal of the action before trial.

CHAPTER I.

FINDING AND PRESENTATION OF THE INDICTMENT.

SECTION 268. Indictment must be found by twelve grand jurors, and indorsed by foreman.
269. If not so found, depositions, etc., must be returned to the court, with dismissal indorsed.
270. Effect of dismissal.
271. Names of witnesses must be indorsed upon indictment.
272. Indictment must be presented in presence of the grand jury and filed.

§ 268. Indictment must be found by twelve grand jurors and indorsed by foreman.

An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be indorsed, "a true bill," and the indorsement must be signed by the foreman of the grand jury.

People v. Petrea (1883), 30 Hun 101, 1 Crim. Rep. 208; People v. Winner (1894), 80 Hun 184, 30 N. Y. Supp. 54; Smith v. Town of Greenwich (1894), 61 St. Rep. 786, 30 N.Y. Supp. 56; People v. Winant (1898), 24 Misc. 362, 53 N. Y. Supp. 695; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 606, 94 N. Y. Supp. 1037; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630; People v. Klaw (1907), 53 Misc. 160, 104 N. Y. Supp. 482; People v. Bills, (1904), 44 Misc. 350, 89 N. Y. Supp. 1091; People v. Sexton (1903), 42 Misc. 316, 86 N. Y. Supp. 517; People v. Scannell (1902), 37 Misc. 845, 847, 75 N. Y. Supp. 500.

See Joyce on Indictments with Precedents of Forms.

§ 269. If not so found, depositions, etc., must be returned to the court, with dismissal indorsed.

If twelve grand jurors do not concur in finding an indictment, the depositions (and statement, if any) transmitted to them, must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

People v. Winner (1894), 80 Hun 134, 30 N. Y. Supp. 54; Smith v. Town of Greenwich (1894), 61 St. Rep. 786, 30 N. Y. Supp. 56; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630.

§ 270. Effect of dismissal.

The dismissal of a charge does not, however, prevent its being again submitted to a grand jury as often as the court may so direct. But without such direction it cannot be again submitted.

People v. Bd. of Police Com'rs (1885), 100 N. Y. 615; People v. Winner (1894), 80 Hun 134; 30 N. Y. Supp. 54; People v. Warren 1888), 14 St. Rep. 34; Smith v. Town of Greenwich (1894), 61 St. Rep. 786, 30 N. Y. Supp. 56; People v. Clements (1887), 5 Crim. Rep. 297; People v. Neidhart (1901), 35 Misc. 192, 71 N. Y. Supp. 591; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630; People v. Dillon (1910), 197 N. Y. 254, 259.

§ 271. Names of witnesses must be indorsed upon indictment.

When an indictment is found the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, as provided in section two hundred and fifty-five, must be indorsed upon the indictment before it is presented to the court. If not so indorsed, the court must, upon the application of the defendant, at any time before trial, direct the names of such witnesses as they appear upon the minutes of the grand jury, to be furnished to him forthwith.

People v. Winner (1894), 80 Hun 134, 30 N. Y. Supp. 54; Smith v. Town of Greenwich (1894), 61 St. Rep. 786, 30 N. Y. Supp. 56; People v. Shea (1895), 69 St. Rep. 332, 147 N. Y. 80; People v. Glen (1903), 178 N. Y. 395, 404; Matter of Jones (1905), 101 App. Div. 59, 92 N. Y. Supp. 275; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp. 630; People v. Steinhardt (1905), 47 Misc. 252, 261, 93 N. Y. Supp. 1026.

§ 272. Indictment must be presented in presence of the grand jury and filed.

An indictment, when found by the grand jury, as prescribed in section two hundred and sixty-eight, must be presented by their

foreman in their presence to the court, and must be filed with the clerk, and remain in his office as a public record, but it must not be shown to any person other than a public officer, until the defendant has been arrested or has appeared.

People v. Winner (1894), 80 Hun 124, 30 N. Y. Supp. 54; Smith v. Town of Greenwich (1894), 61 St. Rep. 786, 30 N. Y. Supp. 56; People v. Petrea (1883), 1 Crim. Rep. 208, 30 Hun 101; People v. Menken (1885), 3 Crim. Rep. 239, 36 Hun 94; People v. Scannell (1901), 36 Misc. 43, 72 N. Y. Supp. 449; People v. Mills (1904), 178 N. Y. 283, 287, 293, aff'g 91 App. Div. 333, 86 N. Y. Supp. 529; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 606, 94 N. Y. Supp. 1037; Matter of Jones (1905), 101 App. Div. 59, 92 N. Y. Supp. 275; People v. Klaw (1907), 53 Misc. 160, 104 N. Y. Supp. 482; People v. Rathbun (1904), 44 Misc. 350, 89 N. Y. Supp. 746; People v. Scannell (1902), 37 Misc. 345, 347, 75 N. Y. Supp. 500.

CHAPTER II.

FORM OF THE INDICTMENT.

SEC. 273. Forms of pleading heretofore existing, abolished.
274. First pleading for the people, is indictment.
275. Indictment, what to contain.
276. Form of indictment.
277. When defendant is indicted by fictitious or erroneous name, his true name may be inserted in subsequent proceedings.
278. 279. Indictment must charge but one crime and in one form, except where it may be committed by different means.
280. Statement as to time when crime was committed.
281. Statement as to person injured or intended to be injured.
282. Construction of words used in indictment.
283. Words used in a statute need not be strictly pursued.
284. Indictment when sufficient.
285. Indictment not sufficient for defect of form, not tending to prejudice defendant.
286. Presumption of law and matters of which judicial notice is taken, need not be stated.
287. Pleading a judgment or determination of, or proceeding before a court or officer of special jurisdiction.
288. Private statute, how pleaded.
289. Pleading in indictment for libel.
290. Pleading in indictment for forgery, where the instrument has been destroyed or withheld by defendant.
291. Pleading in indictment for perjury or subornation of perjury.
292. Upon indictment against several, one or more may be convicted or acquitted.
292a. Two indictments against same defendant for same offense.

273. Forms of pleading heretofore existing abolished. l the forms of pleading in criminal actions, heretofore exist- are abolished; and hereafter, the forms of pleading, and ules by which the sufficiency of pleadings is to be determined, hose prescribed by this Code.

ple v. Conroy (1884), 97 N. Y. 62, 2 Crim. Rep. 573; People v. Rugg (1885), Y. 537, 3 Crim. Rep. 179; People v. Johnson (1886), 104 N. Y. 213; People lson (1888), 109 N. Y. 345; People v. Peckens (1897), 153 N. Y. 586; People mner (1898), 33 App. Div. 347; 53 N. Y. Supp. 817; People v. Petrea , 80 Hun 101, 1 Crim. Rep. 203; People v. Richards (1887), 44 Hun 236, 5 Rep. 367; People v. Gregg (1891), 59 Hun 109, 13 N. Y. Supp. 115; People mar (1887), 11 St. Rep. 19, 8 Crim. Rep. 269; People v. Grigg (1891), 35 sp. 758; 18 N. Y. Supp. 114; People v. Laurence (1893), 51 St. Rep. 288.

People v. Menken (1885), 3 Crim. Rep. 237; Matter of Jones (1903), 101 App. Div. 63, 92 N. Y. Supp. 275; People v. Wheeler (1901), 66 App. Div. 187, 192, 73 N. Y. Supp. 130; People v. Tatum (1908), 60 Misc. 312; People v. Herzog (1905), 47 Misc. 50, 55, 93 N. Y. Supp. 357; People v. Scannell (1901), 36 Misc. 483; 485, 73 N. Y. Supp. 1067.

§ 274. First pleading for the people, is indictment.

The first pleading on the part of the people is the indictment.

Stedeker v. Bernard (1886), 102 N. Y. 327; People v. Dumar (1887), 11 St. Rep. 19, 8 Crim. Rep. 269.

§ 275. Indictment, what to contain.

The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

2. A plain and concise statement of the act constituting the crime, without unnecessary repetition.

People v. Conroy (1884), 97 N. Y. 62, 2 Crim. Rep. 565, 570, 573; People v. Rugg (1885), 98 N. Y. 537, 3 Crim. Rep. 179; People v. Dumar (1887), 106 N. Y. 502, 42 Hun 83, 11 St. Rep. 19; People v. Willson (1888), 109 N. Y. 345; People v. Harris (1890), 123 N. Y. 71, 28 St. Rep. 298; People v. Stark (1893), 136 N. Y. 533, 35 St. Rep. 153; People v. Perkins (1897), 153 N. Y. 586; People v. Klipfel (1899), 160 N. Y. 374; People v. Kane (1900), 161 N. Y. 383; People v. Flaherty (1900), 162 N. Y. 540; People v. Lammerts (1900), 164 N. Y. 144; People v. Polhamus (1896), 8 App. Div. 137, 40 N. Y. Supp. 491; People v. Willis (1898), 34 App. Div. 206, 54 N. Y. Supp. 642, 158 N. Y. 396, 24 Misc. 538, 54 N. Y. Supp. 521; People v. Lovejoy (1899), 37 App. Div. 55, 55 N. Y. Supp. 543; People v. Huffman (1897), 24 App. Div. 284; 48 N. Y. Supp. 482; People v. Bates (1901), 61 App. Div. 560, 71 N. Y. Supp. 123; People v. Miller (1901), 64 App. Div. 453, 72 N. Y. Supp. 253, rev'd 169 N. Y. 344; People v. Moore (1885), 37 Hun 87, 3 Crim. Rep. 462; People v. Dimick (1886), 41 Hun 621, 107 N. Y. 29, 11 St. Rep. 739, People v. Everest (1889), 51 Hun 19, 3 N. Y. Supp. 612; People v. Stark (1891), 59 Hun 56, 12 N. Y. Supp. 688; People v. Gregg (1891), 59 Hun 109, 35 St. Rep. 758, 13 N. Y. Supp. 114; People v. Ostrander (1892), 64 Hun 336, 45 St. Rep. 556, 19 N. Y. Supp. 324; People v. Evans (1893), 69 Hun 226; 23 N. Y. Supp. 717; People v. Rockhill (1893), 74 Hun 243, 26 N. Y. Supp. 222; People v. Flaherty (1894), 79 Hun 50, 29 N. Y. Supp. 641; People v. Stone (1895), 85 Hun 132, 32 N. Y. Supp. 519; People v. Barker (1888), 15 St. Rep. 601; People v. Klock (1888), 16 St. Rep. 565; People v. Farrel (1889), 28 St. Rep. 44, 8 N. Y. Supp. 231; Schneider v. U. S. Life Ins. Co. (1890), 33 St. Rep. 170; People v. Rice (1891), 35 St. Rep. 186, 13 N. Y. Supp. 161; People v. Quinn (1892), 44 St. Rep. 921; 18 N. Y. Supp. 569; In re Barnes Estate (1896), 74 St. Rep. 933, 40 N. Y. Supp. 494; People v. Thorn (1897), 21 Misc. 131, 47 N. Y. Supp. 46, 56 N. Y. 286; People v. Spencer (1899), 27 Misc. 493, 58 N. Y. Supp. 1127; People v. McLaughlin (1901) 33 Misc. 692, 68 N. Y. Supp. 1108; People v. Hertz (1901), 35 Misc. 179; 71 N. Y. Supp. 489; People v. Bellows (1884), 2 Crim. Rep. 14; People v. Peck (1884), 2 Crim. Rep. 315; People v. Menken (1885), 3 Crim. Rep. 237; People v. Wise (1885), 3 Crim. Rep. 305, 310; Matter of

Corbalis (1904), 178 N. Y. 519; People v. Murray (1903), 175 N. Y. 479, rev'g 76 App. Div. 118, 125, 78 N. Y. Supp. 721, and aff'g 87 Misc. 687, 688, 76 N. Y. Supp. 373; People v. Schlessel (1908), 127 App. Div. 512; People v. Gillette (1908), 126 App. Div. 670; People v. Alderdice (1907), 120 App. Div. 369; People v. Seeley (1905), 105 App. Div. 149, 151, 93 N. Y. Supp. 982; Matter of Jones (1905), 101 App. Div. 63, 92 N. Y. Supp. 275; People v. Adams (1903), 85 App. Div. 392, 83 N. Y. Supp. 481, aff'd 176 N. Y. 352; People v. Goslin (1901), 67 App. Div. 16, 18, 73 N. Y. Supp. 520; People v. Wheeler (1901), 66 App. Div. 187, 192, 73 N. Y. Supp. 130; People v. Smith (1907), 56 Misc. 6; People v. Jackson (1905), 47 Misc. 60, 65; People v. Herzog (1905), 47 Misc. 50, 56, 93 N. Y. Supp. 357; People v. Quimby (1906), 113 App. Div. 794, 99 N. Y. Supp. 330; People v. Foster (1908), 60 Misc. 4; People v. Geyer (1909), 132 App. Div. 790, 794, 117 N. Y. Supp. 662; People v. Rouss (1909), 63 Misc. 135, 137, 118 N. Y. Supp. 433; People v. Tillman (1909), 63 Misc. 461, 118 N. Y. Supp. 442; People v. Richardson (1909), 64 Misc. 684.

§ 276. Form of indictment.

The indictment should be signed by the district attorney, and may be substantially in the following form:

Supreme court, county of [stating the proper county]. or

Supreme court, city and county of New York. or

County court of the county of [stating the proper county]. or

Court of general sessions of the city and county of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
A. B.

The grand jury of the [here insert the name of the county, or of the city, or of the city and county, in which the indictment is found], by this indictment, accuse A. B. of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name, such as libel, assault, or the like, insert a brief description of it, as is given by statute], committed as follows:

The said A. B., on the day of 18, , at the town [or city or village, as the case may be] of in this county [here set forth the act charged as an offense].

A. B.

District Attorney of the county of

(Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

People v. Conroy (1884), 97 N. Y. 62, 2 Crim. Rep. 578; People v. Dimick

(1887), 107 N. Y. 13, 41 Hun 621, 11 St. Rep. 739, 5 Crim. Rep. 187; People v. Wilson (1888), 109 N. Y. 345; People v. Harris (1890), 123 N. Y. 71, 11 St. Rep. 298; People v. Lytle (1896), 7 App. Div. 569, 74 St. Rep. 724, 40 N. Y. Supp. 153; People v. Seldner (1875), 62 N. Y. 360; People v. Grimshaw (1884), 33 Hun 507; People v. Reavey (1886), 38 Hun 422, 4 Crim. Rep. 14; People v. Maxon (1890), 57 Hun 370, 10 N. Y. Supp. 593; People v. Gregg (1891), 59 Hun 109, 13 N. Y. Supp. 114; People v. Ostrander (1892), 64 Hun 336, 19 N. Y. Supp. 325; People v. Rockhill (1893), 74 Hun 243, 55 St. Rep. 668, 26 N. Y. Supp. 223; People v. Flaherty (1894), 79 Hun 51, 29 N. Y. Supp. 641; People v. Stone (1895), 85 Hun 132, 134, 65 St. Rep. 675, 32 N. Y. Supp. 519; People v. Dumar (1887), 11 St. Rep. 19, 8 Crim. Rep. 269; People v. Barber (1888), 15 St. Rep. 601; Blacker v. Guild (1889), 28 St. Rep. 14; 7 N. Y. Supp. 651; Stelz v. Schrack (1890), 32 St. Rep. 133, 10 N. Y. Supp. 790; People v. Rice (1891), 13 N. Y. Supp. 162; People v. Quinn (1892), 18 N. Y. Supp. 569; People v. Thorn (1897), 21 Misc. 131; 47 N. Y. Supp. 46; People v. Bellows (1884), 2 Crim. Rep. 14; People v. Peck (1884), 2 Crim. Rep. 315; People v. Burns (1884), 2 Crim. Rep. 392; People v. Menken (1885), 3 Crim. Rep. 237; People v. Corbalis (1904), 178 N. Y. 519; People v. Gillette (1906), 126 App. Div. 665; People v. Seeley, (1905), 105 App. Div. 149, 151, 93 N. Y. Supp. 982; Matter of Jones (1905), 101 App. Div. 63, 92 N. Y. Supp. 275; People v. Bissert (1902), 71 App. Div. 118, 121, 75 N. Y. Supp, 630; People v. Goslin (1901), 67 App. Div. 16, 18, 73 N. Y. Supp. 520; People v. Wheeler (1901), 66 App. Div. 187, 192, 73 N. Y. Supp. 130; People v. Rathbun (1904), 44 Misc. 89, 89 N. Y. Supp. 746; People v. Murray (1902), 37 Misc. 687, 688, 76 N. Y. Supp. 373, rev'd 76 App. Div. 125, aff'd 175 N. Y. 479; People v. Rouss (1909), 63 Misc. 135, 137, 118 N. Y. Supp. 433; People v. Tillman (1909), 63 Misc. 461, 118 N. Y. Supp. 442; People v. Richardson (1909), 64 Misc. 684.

§ 277. When defendant is indicted by fictitious or erroneous name, his true name may be inserted in subsequent proceedings.

If a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

People v. Everhardt (1887), 6 Crim. Rep. 235; People v. Goslin (1901), 67 App. Div. 16, 18, 73 N. Y. Supp. 520; Matter of Osborne (1909), 62 Misc. 575, 585, 117 N. Y. Supp. 169.

§ 278. Indictment must charge but one crime and in one form except where it may be committed by different means.

The indictment must charge but one crime and in one form, except as in the next section provided.

People v. Dumar (1887), 106 N. Y. 502, 8 Crim. Rep. 270; People v. Dimick (1887), 107 N. Y. 13; People v. Charbineau (1889), 115 N. Y. 433; People v. Adler (1893), 140 N. Y. 331; People v. Wilson (1897), 151 N. Y. 403, 12 Crim. *Rep. 116, 7 App. Div. 335*; People v. Kane (1900), 161 N. Y. 384, 43 App. Div.

482; People v. Hartwell (1901), 166 N. Y. 365; People v. Kerns (1896), 7 App. Div. 538; 40 N. Y. Supp. 248; People v. Polhamus (1896), 8 App. Div. 186, 40 N. Y. Supp. 491; People v. Huffman (1897), 24 App. Div. 234, 48 N. Y. Supp. 482; People v. Klipfel (1899), 37 App. Div. 226, 55 N. Y. Supp. 789; People v. Reilly (1900), 49 App. Div. 222, 63 N Y. Supp. 18; People v. O'Malley (1900), 52 App. Div. 47, 64 N. Y. Supp. 843; People v. Callahan (1883), 29 Hun 582; People v. Moore (1885), 37 Hun 67; People v. Upton (1885), 38 Hun 110; People v. O'Donnell (1887), 46 Hun 358, 7 Crim. Rep. 346; People v. Harmon (1888), 49 Hun 558, 18 St. Rep. 820, 2 N. Y. Supp. 421, 6 Crim. Rep. 172; Kramer v. Amberg (1889), 58 Hun 427, 6 N. Y. Supp. 303; People v. Rockhill (1893), 74 Hun 244, 26 N. Y. Supp. 223; People v. Burns (1889), 25 St. Rep. 98, 6 N. Y. Supp. 611; People v. Emerson (1889), 25 St. Rep. 466, 6 N. Y. Supp. 274; People v. Charbineau (1889), 26 St. Rep. 490; People v. Harris (1889), 28 St. Rep. 300, 7 N. Y. Supp. 773; People v. Crotty (1890), 30 St. Rep. 44, 9 N. Y. Supp. 937; People v. Rice (1891), 35 St. Rep. 186, 13 N. Y. Supp. 162; People v. Rose (1891), 39 St. Rep. 292, 15 N. Y. Supp. 816; Brusie v. Peck Bros. & Co. (1892), 48 St. Rep. 459; Booth v. R. W. & O. S. R. R. Co. (1893), 55 St. Rep. 663; People ex rel. Young v. Hannan (1894), 61 St. Rep. 726, 9 Misc. 604, 30 N. Y. Supp. 370; People v. Clark (1891), 14 N. Y. Supp. 655; People v. Hatter (1893), 22 N. Y. Supp. 689; People v. Sebring (1895), 35 N. Y. Supp. 288, 14 Misc. 40; People v. Connors (1895), 13 Misc. 584; 35 N. Y. Supp. 472; People v. Thorn (1897), 21 Misc. 131, 47 N. Y. Supp. 46; People v. Willis (1898), 24 Misc. 538, 54 N. Y. Supp. 52, 34 App. Div. 210, 54 N. Y. Supp. 642; People v. Infield (1883), 1 Crim. Rep. 146; People v. Cole (1884), 2 Crim. Rep. 109; People v. Rugg (1885), 3 Crim. Rep. 179; People v. Burns (1889), 7 Crim. Rep. 92, 6 N. Y. Supp. 611; People v. De Garmo (1904), 179 N. Y. 132; People v. Kellogg (1904), 105 App. Div. 505, 509, 94 N. Y. Supp. 617; People v. Goslin (1901), 67 App. Div. 16, 18, 73 N. Y. Supp. 520; People v. Gallagher (1908), 58 Misc. 513, 111 N. Y. Supp. 478; People v. Rouss (1909), 63 Misc. 135, 137, 118 N. Y. Supp. 433.

§ 279. Charging crime in separate counts.

The crime may be charged in separate counts to have been committed in a different manner, or by different means; and where the acts complained of may constitute different crimes, such crimes may be charged in separate counts.

People v. Dimick (1887), 107 N. Y. 13; People v. McCarthy (1888), 110 N. Y. 309, 18 St. Rep. 267; People v. Charbineau (1889), 115 N. Y. 433; People v. Adler (1893), 140 N. Y. 331; People v. Wilson (1897), 151 N. Y. 408, 12 Crim. Rep. 116, 7 App. Div. 335, 40 N. Y. Supp. 107; People v. Huffman (1897), 24 App. Div. 234, 12 Crim. Rep. 558, 48 N. Y. Supp. 482; People v. Reilly (1900), 49 App. Div. 222, 63 N. Y. Supp. 18; People v. O'Malley (1900), 52 App. Div. 47, 64 N. Y. Supp. 843; People v. Callahan (1883), 29 Hun 582; People v. Dimick (1886), 41 Hun 621; People v. O'Donnell (1887), 46 Hun 358; People v. Rose (1889), 52 Hun 88, 22 St. Rep. 390, 39 id. 292, 15 N. Y. Supp. 815; People v. Emerson (1889), 53 Hun 427, 6 N. Y. Supp. 274, 6 Crim. Rep. 157, 7 id. 104; People v. Rockhill (1893), 74 Hun 244, 26 N. Y. Supp. 223; People v. McKane (1894), 80 Hun 332, 30 N. Y. Supp. 95; People v. Harmon (1888), 18 St. Rep. 820; 2 N. Y. Supp. 421; People v. Harris (1889), 28 St. Rep. 300; People v. Crotty (1890), 30 St. Rep. 44, 9 N. Y. Supp. 937; People v. Rice (1891), 35 St.

Rep. 185, 18 N. Y. Supp. 161; Brusie v. Peck Bros. & Co. (1892), 49 St. Rep. 439; People v. Clark (1891), 14 N. Y. Supp. 655; People v. Hatter (1893), 23 N. Y. Supp. 689; People v. Haren (1901), 35 Misc. 592, 72 N. Y. Supp. 205; People v. Herlihy (1901), 35 Misc. 712, 72 N. Y. Supp. 389; People v. De Garmo (1904), 179 N. Y. 132; People v. Sullivan (1903), 178 N. Y. 122, 128, 129; People v. Kellogg (1905), 105 App. Div. 505, 509, 94 N. Y. Supp. 617; People v. Wheeler (1903), 79 App. Div. 400, 79 N. Y. Supp. 454; People v. Adams (1902), 72 App. Div. 166, 167, 76 N. Y. Supp. 361; People v. Goslin (1901), 67 App. Div. 16, 18, 73 N. Y. Supp. 520; People v. Foster (1906), 60 Misc. 6; People ex rel. Dawkins v. Frost (1908), 58 Misc. 619, 109 N. Y. Supp. 1121; People ex rel. Bedell v. Noster (1909), 132 App. Div. 116, 116 N. Y. Supp. 530; People v. Rouse (1909), 63 Misc. 135, 137, 118 N. Y. Supp. 433; People v. Wright (1909), 133 App. Div. 133, 117 N. Y. Supp. 441.

§ 280. Statement as to time when crime was committed.

The precise time at which the crime was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the crime.

People v. Jackson (1888), 111 N. Y. 362, 6 Crim. Rep. 399; People v. Flaherty (1898), 27 App. Div. 545, 50 N. Y. Supp. 574, rev'd 162 N. Y. 540; People v. Willis (1898), 34 App. Div. 209, 54 N. Y. Supp. 642, aff'd 158 N. Y. 392, 28 Misc. 573, 52 N. Y. Supp. 808; People v. Emerson (1889), 58 Hun 437, 6 Crim. Rep. 158; People v. Polhamus (1896), 74 St. Rep. 932, 40 N. Y. Supp. 491; People v. Harmon (1888), 6 Crim. Rep. 171, 18 St. Rep. 820, 2 N. Y. Supp. 421; People v. Lindenborn (1898), 23 Misc. 430, 52 N. Y. Supp. 101; People ex rel. Cochran v. Hyatt (1902), 172 N. Y. 176, 204; People v. Murphy (1904), 93 App. Div. 383, 87 N. Y. Supp. 786; People v. Jones (1909), 129 App. Div. 772, 113 N. Y. Supp. 1097.

§ 281. Statement as to person injured or intended to be injured.

When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

People v. Richards (1887), 44 Hun 286, 5 Crim. Rep. 367, 108 N. Y. 137; People v. Dunn (1889), 25 St. Rep. 460, 6 N. Y. Supp. 805; People v. Johnson 1887), 5 Crim. Rep. 219, 104 N. Y. 213; People v. Clements (1887), 5 Crim. Rep. 287; People v. Herman (1887), 6 Crim. Rep. 199; People v. Lindenborn (1898), 23 Misc. 430, 52 N. Y. Supp. 101; People v. Kellogg (1905), 105 App. Div. 505, 510, 94 N. Y. Supp. 617.

§ 282. Construction of words used in indictment.

The words used in an indictment must be construed in their

usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

People v. Klock (1888), 16 St. Rep. 565; People v. Farrell (1890), 28 St. Rep. 44, 8 N. Y. Supp. 230; People v. Crotty (1890), 30 St. Rep. 45, 9 N. Y. Supp. 937; People v. Hatter (1893), 22 N. Y. Supp. 689; People v. Wise (1885), 3 Crim. Rep. 305; People v. Dunn (1889), 7 Crim. 185, 58 Hun 387, 6 N. Y. Supp. 305; People v. Dumar (1887), 8 Crim. Rep. 270, 106 N. Y. 510; People v. Lindenborn (1898), 23 Misc. 430, 52 N. Y. Supp. 101; People v. Spencer (1899), 27 Misc. 492, 14 Crim. Rep. 151, 58 N. Y. Supp. 1127; People v. McLaughlin (1901), 33 Misc. 683, 68 N. Y. Supp. 1108; People v. Stacy (1907), 119 App. Div. 747, 144 N. Y. Supp. 618; People v. Foster (1908), 60 Misc. 7.

§ 283. Words used in a statute need not be strictly pursued.

Words used in a statute to define a crime need not be strictly pursued in the indictment; but other words, conveying the same meaning, may be used.

People v. Dimick (1886), 41 Hun 621, 5 Crim. Rep. 187; People v. Gregg (1891), 59 Hun 112, 35 St. Rep. 761, 13 N. Y. Supp. 116; People v. Flaherty (1894), 79 Hun 50, 61 St. Rep. 198, 29 N. Y. Supp. 641; People v. Lowndes (1892), 42 St. Rep. 362; People v. Cleary (1895), 70 St. Rep. 209; 35 N. Y. Supp. 588; People v. Hatter (1893), 22 N. Y. Supp. 689; People v. Lindenborn (1898), 23 Misc. 430, 52 N. Y. Supp. 101; People v. Mead (1908), 125 App. Div. 8, 109 N. Y. Supp. 163; People v. Stacy (1907), 119 App. Div. 747; People v. Goslin (1901), 67 App. Div. 16, 19, 73 N. Y. Supp. 520.

§ 284. Indictment, when sufficient.

The indictment is sufficient, if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it though the name of the court be not accurately stated;

2. That it was found by a grand jury of the county, or if in a city court, of the city in which the court was held;

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that it has been found impossible to discover his real name;

4. That the crime was committed at some place within the jurisdiction of the court; except where, as provided by sections one hundred and thirty-three to one hundred and thirty-eight, both inclusive, the act, though done without the local jurisdiction of the county, is triable therein;

5. That the crime was committed at some time prior to the finding of the indictment;

6. That the act or omission, charged as the crime, is plainly and concisely set forth;

7. That the act or omission, charged as the crime, is stated with such a degree of certainty, as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

People v. Conroy (1884), 97 N. Y. 62, 2 Crim. Rep. 570; People v. Buddensieck (1886), 103 N. Y. 487, 5 Crim. Rep. 71; People v. Dimick (1887), 107 N. Y. 13, 11 St. Rep. 739; People v. Jackson (1888), 111 N. Y. 362, 6 Crim Rep. 399; People v. Helmer (1898), 154 N. Y. 600, 13 Crim. Rep. 1, rev'g 13 App. Div. 432; People v. Willis (1899), 158 N. Y. 396; People v. Lammerts (1900), 164 N. Y. 144; People v. Maine (1900), 51 App. Div. 144, 64 N. Y. Supp. 579, rev'd 166 N. Y. 50; People v. Seldner (1901), 62 App. Div. 360, 7 N. Y. Supp. 35; People v. Bowe (1884), 34 Hun 533, 3 Crim. Rep. 160; People v. Deeney (1885), 35 Hun 311; People v. Reavey (1886), 38 Hun 421, 4 Crim. Rep. 14; People v. Beckwith (1886), 42 Hun 621; People v. Horton (1892), 62 Hun 611, 17 N. Y. Supp. 2; People v. Ostrander (1892), 64 Hun 340, 19 N. Y. Supp. 324; People v. Evans (1893), 69 Hun 226, 23 N. Y. Supp. 717; People v. Rockhill (1893), 74 Hun 245, 26 N. Y. Supp. 223; People v. Farrell (1890), 28 St. Rep. 44, 8 N. Y. Supp. 230; People v. Crotty (1890), 30 St. Rep. 45, 9 N. Y. Supp. 937; Moore v. N. Y. El. R. R. Co. (1892), 42 St. Rep. 588; People v. Quinn (1892), 44 St. Rep. 921, 18 N. Y. Supp. 569; People v. Lawrence (1893), 51 St. Rep. 288; People v. Peck (1893), 51 St. Rep. 487, 22 N. Y. Supp. 587; People v. Olsen (1891), 15 N. Y. Supp. 781; People v. Lindenborn (1898), 23 Misc. 430, 52 N. Y. Supp. 101; Matter of Summit Ave. (1901), 35 Misc. 59, 71 N. Y. Supp. 207; People v. Hertz (1901), 35 Misc. 180, 71 N. Y. Supp. 489; People v. De Garmo (1904), 179 N. Y. 132; People v. Mead (1908), 125 App. Div. 8, 109 N. Y. Supp. 163; People v. Stacy (1907), 119 App. Div. 747, 104 N. Y. Supp. 618; People v. Murphy (1903), 93 App. Div. 383, 87 N. Y. Supp. 786; People v. Trank (1903), 88 App. Div. 296, 85 N. Y. Supp. 55; People v. Adams (1903), 85 App. Div. 392, 83 N. Y. Supp. 481, aff'd 176 N. Y. 352; People v. Wheeler (1901), 66 App. Div. 187, 192, 73 N. Y. Supp. 130; People v. Foster (1903), 60 Misc. 11; People v. Herzog (1905), 47 Misc. 50, 56, 93 N. Y. Supp. 857; People v. Geyer (1909), 132 App. Div. 790, 794, 117 N. Y. Supp. 662; People v. Rouss (1909), 63 Misc. 135, 140, 118 N. Y. Supp. 433.

§ 285. Indictment not insufficient for defect of form, not tending to prejudice defendant.

No indictment is sufficient nor can the trial, judgment, or other proceedings thereon be affected, by reason of an imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

People v. Buddensieck (1886), 103 N. Y. 487, 41 Hun 621; People v. Dimick (1887), 107 N. Y. 13, 11 St. Rep. 739; People v. Clements (1887), 107 N. Y. 205, 11 St. Rep. 384; People v. Welden (1888), 111 N. Y. 569; People v. Helmer (1898), 154 N. Y. 600; People v. Lammerts (1900), 164 N. Y. 144; People v. *Lovejoy (1899), 87 App.* Div. 55, 55 N. Y. Supp. 543; People v. Seldner (1901),

62 App. Div. 360, 71 N. Y. Supp. 35; People v. Glen (1901), 64 App. Div. 170, 71 N. Y. Supp. 893; People v. Petrea (1888), 30 Hun 102; People v. Osterhout (1884), 34 Hun 261, 3 Crim. Rep. 445; Simmons v. N. Y. Life Ins. Co. (1885), 38 Hun 311; People v. Haight (1889), 54 Hun 9, 7 N. Y. Supp. 89; People v. Ostrander (1892), 64 Hun 340, 19 N. Y. Supp. 324; People v. Rockhill (1893), 74 Hun 245, 26 N. Y. Supp. 228; People v. Flaherty (1894), 79 Hun 51, 61 St. Rep. 198, 29 N. Y. Supp. 641; People v. Gregg (1891), 35 St. Rep. 761, 59 Hun 112, 13 N. Y. Supp. 114; People v. McHale (1891), 39 St. Rep. 762, 15 N. Y. Supp. 497; Matter of Shrader (1892), 42 St. Rep. 166, 17 N. Y. Supp. 273; People v. Lowndes (1892), 42 St. Rep. 362; People v. Quinn (1892), 44 St. Rep. 921, 18 N. Y. Supp. 569; People v. Olsen (1891), 15 N. Y. Supp. 780; People v. Camp. (1891), 17 N. Y. Supp. 397; People v. Hatter (1893), 22 N. Y. Supp. 691; People v. Petrea (1882), 1 Crim. Rep. 204; People v. Bernardo (1883), 1 Crim. Rep. 245; People v. Spencer (1899), 27 Misc. 492, 58 N. Y. Supp. 1127; People v. McLaughlin (1901), 33 Misc. 692, 68 N. Y. Supp. 1108; People v. Hertz (1901), 35 Misc. 180, 71 N. Y. Supp. 489; People v. Wiechers (1904), 179 N. Y. 464; People v. De Garmo (1904), 179 N. Y. 132; People v. Stacy (1907), 119 App. Div. 747; People v. Lewis (1906), 111 App. Div. 559, 98 N. Y. Supp. 88; People v. Root (1904), 94 App. Div. 87, 87 N. Y. Supp. 962; People v. Adams (1903), 85 App. Div. 392, 83 N. Y. Supp. 481, aff'd 176 N. Y. 352; People v. Mosier (1902), 73 App. Div. 510, 76 N. Y. Supp. 65; People v. Wheeler (1901), 66 App. Div. 187, 192, 73 N. Y. Supp. 130; People v. Foster (1908), 60 Misc. 11; People v. Herzog (1905), 47 Misc. 50, 56, 93 N. Y. Supp. 357; People v. Geyer (1909), 132 App. Div. 790, 794, 117 N. Y. Supp. 662; People v. Rouss (1909), 63 Misc. 185, 140 N. Y. Supp. 439.

§ 286. Presumptions of law and matters of which judicial notice is taken, need not be stated.

Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

People v. Flaherty (1894), 79 Hun 51, 61 St. Rep. 198, 29 N. Y. Supp. 641; People v. McLaughlin (1901), 33 Misc. 692, 68 N. Y. Supp. 1108.

§ 287. Pleading a judgment or determination of, or proceeding before, a court or officer of special jurisdiction.

In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

§ 288. Private statute, how pleaded.

In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

§ 289. Pleading in indictment for libel.

An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application of the party libeled, of the defamatory matter on which the indictment is founded; but it is sufficient to state generally, that the same was published concerning him; and the fact that it was so published, must be established on the trial.

Paddock v. Carroll (1900), 48 App. Div. 202, 62 N. Y. Supp. 790, 14 Crim. Rep. 402; People v. Stark (1891), 59 Hun 59, 35 St. Rep. 155, 12 N. Y. Supp. 688; People v. Isaacs (1882), 1 Crim. Rep. 151; People v. Wise (1885), 3 Crim. Rep. 305, 310; People v. Stokes (1893), 30 Abb. N. C. 212, 24 N. Y. Supp. 727.

§ 290. Pleading in indictment for forgery, where the instrument has been destroyed, or withheld by defendant.

When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

People v. Wise (1885), 3 Crim. Rep. 305; People v. Herzog (1905), 47 Misc. 50, 56, 93 N. Y. Supp. 357.

§ 291. Pleading in indictment for perjury or subornation of perjury.

In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person where or before whom the perjury was committed.

People v. Ostrander (1892), 64 Hun 340, 345, 19 N. Y. Supp. 328; People v. Williams (1888), 18 St. Rep. 403, 2 N. Y. Supp. 382; People v. Wise (1885), 3 Crim. Rep. 305, 310; People v. Gillette (1908), 126 App. Div. 671; People v. Root (1904), 94 App. Div. 87, 87 N. Y. Supp. 962; People v. Tatum (1908), 60 Misc. 318, 112 N. Y. Supp. 36; People v. Tillman (1909), 63 Misc. 461, 465, 118 N. Y. Supp. 442.

§ 292. Upon indictment against several, one or more may be convicted or acquitted.

Upon an indictment against several defendants any one or more may be convicted or acquitted.

People v. Cotto (1892), 131 N. Y 577; People v. N. Y. Soc. P. C. C. (1900), 161 N. Y. 241; People v. Trimble (1892), 42 St. Rep. 716.

§ 292-a. Two indictments against the same defendant for the same offense.

If there be at any time pending against the same defendant, two indictments for the same offense; or two indictments for the same matter, although charged as different offenses, the indictment first found, shall be deemed to be superseded by such second indictment, and shall be set aside. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 726, § 42.
People v. Rosenthal (1910), 197 N. Y. 394, 401.

CHAPTER III.

AMENDMENT OF THE INDICTMENT.

SECTION 293. When amendment allowed.
294. Trial to proceed.
295. Effect of verdict, etc.

§ 293. When amendment allowed.

Upon the trial of an indictment, when a variance between the allegation therein and the proof, in respect to time, or in the name or description of any place, person or thing, shall appear, the court may, in its judgment, if the defendant cannot be thereby prejudiced in his defense on the merits, direct the indictment to be amended, according to the proof, on such terms as to the postponement of the trial, to be had before the same or another jury, as the court may deem reasonable.

New.

People v. Johnson (1887), 104 N. Y. 213, 5 Crim. Rep. 217; People v. Jackson (1888), 111 N. Y. 362, 6 Crim. Rep. 399; People v. Formosa (1892), 131 N. Y. 478; People v. Coombs (1899), 36 App. Div. 298, 55 N. Y. Supp. 276; People v. Richards (1887), 44 Hun 286, 288, 5 Crim. Rep. 367, rev'd 108 N. Y. 137; People v. Hermon (1887), 45 Hun 175, 6 Crim. Rep. 194; People v. Rose (1889) 22 St. Rep. 390, 4 N. Y. Supp. 787; People v. Dunn (1889), 25 St. Rep. 460, 6 N. Y. Supp. 805; People v. Clegg (1890), 32 St. Rep. 712, 10 N. Y. Supp. 675; People v. Hogan (1891), 14 N. Y. Supp. 233, 37 St. Rep. 117; People v. Clark (1891), 14 N. Y. Supp. 643; People v. Willis (1898), 28 Misc. 573, 52 N. Y. Supp. 808, 13 Crim. Rep. 255, 158 N. Y. 392; People v. Bernardo (1883), 1 Crim. Rep. 245; People v. Poucher (1883), 1 Crim. Rep. 546; People v. Davy (1904), 179 N. Y. 348; Dunk v. Dunk (1903), 88 App. Div. 297, 85 N. Y. Supp. 25; People v. Trank (1903), 88 App. Div. 296, 85 N. Y. Supp. 55; Nestler v. Germania Fire Ins. Co. (1904), 44 Misc. 97, 89 N. Y. Supp. 782; People v. Jones (1909), 129 App. Div. 772, 775, 113 N. Y. Supp. 1097; People v. Lewis (1909), 132 App. Div. 256, 259, 116 N. Y. Supp. 893; People v. Scanlon (1909), 132 App. Div. 528, 116 N. Y. Supp. 57; People v. Geyer (1909), 196 N. Y. 304, rev'g 132 App. Div. 790, 117 N. Y. Supp. 662; People v. Bromwich (1909), 135 App. Div. 67.

§ 294. Trial to proceed.

After such amendment, the trial, whenever the same shall be proceeded with, shall proceed in the same manner and with the same consequences, as if no such variance had occurred.

New.

People v. Johnson (1887), 104 N. Y. 213, 5 Crim. Rep. 217; **People v. Jackson**

(1888), 111 N. Y. 362, 6 Crim. Rep. 399; People v. Richards (1887), 44 Hun 288, 5 Crim. Rep. 369.

§ 295. Effect of verdict, etc.

A verdict and judgment, which shall be given after the making of any such amendment, shall be of the same force and effect, as if the indictment had originally been found in its amended form.

New.

People v. Johnson (1887), 104 N. Y. 213, 5 Crim. Rep. 219; People v. Jackson (1888), 111 N. Y. 362, 6 Crim. Rep. 399.

CHAPTER IV.

ARRAIGNMENT OF THE DEFENDANT.

SECTION 296. Defendant must be arraigned in the court in which indictment is is found, if triable therein, or if not, in that to which it is sent or removed.
297. If indictment be for felony, defendant must be present; if for misdemeanor, he may appear by counsel.
298. When personal appearance is necessary, if defendant be in custody, he must be brought before the court.
298a Bringing into court for arraignment or trial of an imprisoned defendant indicted for offense committed during imprisonment.
298b Bringing into court for arraignment or trial of an imprisoned defendant indicted for a felony.
299. If discharged on bail or deposit, bench warrant to issue.
300. Bench warrant, by whom and how issued.
301. Form of bench warrant.
302. Direction in bench warrant, if indictment be for misdemeanor.
303. If offense be bailable, order for bail to be indorsed on bench warrant.
304. Bench warrant, how served.
305. Proceedings on bench warrant, when defendant is brought before magistrate of another county.
306. Ordering defendant into custody, or increasing bail, when indictment is for felony.
307. Defendant, if present, to be committed; if not, bench warrant to issue.
308. Defendant appearing for arraignment without counsel, to be informed of his right to counsel.
309. Arraignment, how made.
310. If he gave another name, subsequent proceedings to be had by that name, referring to name in the indictment.
311. Time allowed defendant to answer indictment.
312. How defendant may answer indictment.

§ 296. Defendant must be arraigned in the court in which indictment is found, if triable therein, or if not, in that to which it is sent or removed.

When an indictment is filed, the defendant must be arraigned thereon, before the court in which it is found, or before the court to which it is sent or removed.

New.

People v. Bradner (1887), 107 N. Y. 1; People v. Gas Light Co. (1888), 6 Crim. Rep. 189.

§ 297. If indictment be for felony, defendant must be present; if for misdemeanor, he may appear by counsel.

If an indictment be for a felony, the defendant must be personally present when arraigned; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

New.

People v. Miller (1901), 63 App. Div. 13, 71 N. Y. Supp. 212; People v. Gas Light Co. (1888), 6 Crim. Rep. 189; People v. Welsh (1903), 88 App. Div. 65, 67, 84 N. Y. Supp. 703.

§ 298. When personal appearance is necessary, if defendant be in custody, he must be brought before the court.

When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned.

New.

People v. Gas Light Co. (1888), 6 Crim. Rep. 189.

§ 298-a. Bringing into court for arraignment or trial of an imprisoned defendant indicted for offense committed during imprisonment.

The court in which any indictment is pending against any person imprisoned on conviction of a crime in any county jail or state prison, for an offense committed during such imprisonment, is hereby authorized to issue a writ of habeas corpus for the purpose of bringing the individual so indicted before the court for arraignment or trial on such indictment. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1847, ch. 460, § 157.

§ 298-b. Bringing into court for arraignment or trial of an imprisoned defendant indicted for a felony.

The court in which any indictment is pending for a felony, against any person imprisoned on conviction of a crime, in any county jail or state prison, is hereby authorized to issue a habeas corpus for the purpose of bringing the individual so indicted before such court for arraignment or trial, on such indictment. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1847, ch. 460, § 158.

§ 299. If discharged on bail or deposit, bench warrant to issue.

If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned, or if the defendant be for any cause absent when his personal attendance is necessary, the court, in addition to the forfeiture of any undertaking of bail, or of any money deposited, may direct the clerk to issue a bench warrant for his arrest.

New.

People v. Gas Light Co. (1888), 6 Crim. Rep. 189.

§ 300. Bench warrant, by whom, and how issued.

The clerk, on the application of the district attorney, may accordingly at any time after the order, whether the court be sitting or not, issue a bench warrant to one or more counties. A bench warrant for the arrest of any defendant indicted may also be issued by the district attorney at any time after the indictment is found.

Derivation: 4 R. S. 728, § 55, L. 1847 ch. 338.

People ex rel. Sherwin v. Mead (1882), 28 Hun 231.

§ 301. Form of bench warrant.

The bench warrant issued upon the indictment must, if the crime be a felony, be substantially in the following form:

"County of Albany [or as the case may be].

"In the name of the People of the State of New York:

To any peace officer in this State. An indictment having been found on the day of , 18 , in the county court of the county of Albany [or as the case may be], charging C. D. with the crime of [designating it generally].

"You are therefore commanded, forthwith to arrest the above-named C. D., and bring him before that court [or if the indictment have been sent or removed to another court], before the supreme court in the county [or as the case may be] to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of Albany [or, as the case may be, or in the city or county of New York, 'to the keeper of the city prison of the city of New York'].

City [or town] of , the day of , 18 .

"By order of the court.

"E. F., *Clerk*"

or G. H., *District Attorney of the county of*

(Amended by L. 1895. In effect Jan. 1, 1896.)

New.

People ex rel. Sherwin v. Mead (1883), 92 N. Y. 415, 28 Hun 231; People ex rel. Gow v. Bingham (1907), 57 Misc. 70, 107 N. Y. Supp. 1011.

§ 302. Direction in bench warrant if indictment be for misdemeanor.

If the crime be a misdemeanor, the bench warrant must be in a similar form, adding to the body thereof a direction to the following effect: "Or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

New.

People ex rel. Sherwin v. Mead (1883), 92 N. Y. 415, 28 Hun 231; People v. O'Brien (1893), 74 Hun 265, 26 N. Y. Supp. 812.

§ 303. If offense be bailable, order for bail to be indorsed on bench warrant.

If the crime charged be bailable, the court, upon directing the bench warrant to issue, may fix the amount of bail; and in such case an indorsement must be made upon the bench warrant and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of dollars."

New.

People ex rel. Gow v. Bingham, (1907), 57 Misc. 70, 72, 107 N. Y. Supp. 1011.

§ 304. Bench warrant, how served.

The bench warrant may be served in any county, in the same manner as a warrant of arrest, except, that when served in another county, it need not be indorsed by a magistrate of that county.

Derivation: 4 R. S. 728 § 58; L. 1830 ch. 320 § 62; L. 1847 ch. 388.

§ 305. Proceedings on bench warrant when defendant is is brought before magistrate of another county.

If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon, as provided in sections one hundred and fifty-nine to one hundred and sixty-one, both inclusive.

New.

§ 306. Ordering defendant into custody, or increasing bail, when indictment is for felony.

If the defendant, before the finding of an indictment, has given bail for his appearance to answer the charge, the court, to which the indictment is presented or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

New.

§ 307. Defendant, if present, to be committed; if not, bench warrant to issue.

If the defendant be present when the order is made, he must be forthwith committed accordingly. If he be not present, a bench warrant must be issued and proceeded upon, in the manner provided in this chapter.

New.

§ 308. Defendant appearing for arraignment without counsel to be informed of his right to counsel.

If the defendant appear for arraignment without counsel, he must be asked if he desire the aid of counsel, and if he does the court must assign counsel. When services are rendered by counsel in pursuance of such assignment in a case where the offense charged in the indictment is punishable by death or on an appeal from a judgment of death, the court in which the defendant is tried or the action or indictment is otherwise disposed of, or by which the appeal is finally determined, may allow such counsel his personal and incidental expenses upon a verified statement thereof being filed with the clerk of such court, and also reasonable compensation for his services in such court, not exceeding the sum of five hundred dollars, which allowance shall be a charge upon the county in which the indictment in the action is found, to be paid out of the court fund, upon the certificate of the judge or justice presiding at the trial or otherwise disposing of the indictment, or upon the certificate of the appellate court, but no such allowance shall be made unless an affidavit is filed with the clerk of the county by or on behalf of the defendant, showing that he is wholly destitute of means.

New.

People v. Barone (1900), 161 N. Y. 475; People v. Ferraro (1900), 163 N. Y.

546; Matter of Chapman v. City of New York (1901), 168 N. Y. 85; People v. Heiselbety (1898), 30 App. Div. 199, 51 N. Y. Supp. 685, 26 Misc. 101, 55 N. Y. Supp. 4, 13 Crim. Rep. 223; People ex rel. Czaki v. Coler (1899), 44 App. Div. 185, 60 N. Y. Supp. 656; People ex rel. Mullin v. Coler (1901), 61 App. Div. 589, 15 Crim. Rep. 460, 70 N. Y. Supp. 639; People ex rel. Cantwell v. Coler (1901), 61 App. Div. 599, 70 N. Y. Supp. 755; People v. Fitch (1895), 51 N. Y. Supp. 688; People v. Willett (1885), 3 Crim. Rep. 55; People v. Fuller (1901), 35 Misc. 190, 71 N. Y. Supp. 487; 15 Crim. Rep. 478; People v. Borgstorm (1904), 178 N. Y. 258; People v. Simpson (1904), 121 App. Div. 408; People v. Montgomery (1905), 101 App. Div. 338, 342, 91 N. Y. Supp. 765; People ex rel. Acritelli v. Grout (1903), 87 App. Div. 194, 84 N. Y. Supp. 97; Matter of Waldheimer (1903), 84 App. Div. 367, 82 N. Y. Supp. 916; Matter of Monfort (1903), 78 App. Div. 567, 79 N. Y. Supp. 765; People v. Hubel (1907), 54 Misc. 408, 105 N. Y. Supp. 916; People ex rel. Acritelli v. Foster (1903), 40 Misc. 19, 81 N. Y. Supp. 212; People v. Di Medicis (1902), 39 Misc. 438, 439, 80 N. Y. Supp. 212; People ex rel Levy v. Grout (1902), 37 Misc. 430, 75 N. Y. Supp. 290; People v. McElveney (1901), 36 Misc. 316, 73 N. Y. Supp. 639.

§ 309. Arraignment, how made.

The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in stating the charge in the indictment to the defendant, and in asking him whether he pleads guilty or not guilty thereto. If the defendant demand it, the indictment must be read, or a copy thereof furnished to him before requiring him to plead.

Derivation: 4 R. S. 730 § 70.

Wehle v. U. S. Mutual Accident Assn. (1895), 11 Misc. 42, 63 St. Rep. 468; 31 N. Y. Supp. 865; People v. Di Medicis (1902), 39 Misc. 438, 439, 80 N. Y. Supp. 212; People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 310. If he gave another name, subsequent proceedings to be had by that name, referring to name in the indictment.

If when arraigned the defendant alleged that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment may be had against him, by that name, referring also to the name by which he is indicted.

New.

People v. Bradner (1887), 107 N. Y. 1; People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 311. Time allowed defendant to answer indictment.

If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court deems reasonable, to answer the indictment.

New.

People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 312. How defendant may answer indictment.

In answer to the indictment. the defendant may either move the court to set the same aside, or may demur or plead thereto.

New.

People v. Petrea (1883), 92 N. Y. 128, 30 Hun 112; People v. Rutherford (1900), 47 App. Div. 212, 62 N. Y. Supp. 224; People v. Clements (1887), 5 Crim. Rep. 294; People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190; People v. Clark (1891), 8 Crim. Rep. 169, 14 N. Y. Supp. 643; People ex rel. Benton v. Ct. of Sessions (1892), 8 Crim. Rep. 357, 46 St. Rep. 256, 19 N. Y. Supp. 509; People v. Bissert (1902), 71 App. Div. 118, 122, 75 N. Y. Supp. 630; People v. Klaw (1907), 58 Misc. 159, 104 N. Y. Supp. 482.

CHAPTER V.

SETTING ASIDE THE INDICTMENT.

SECTION 313. Indictment, when set aside on motion.
314. Defendant, when precluded from objecting to indictment in any other manner.
315. Motion, when heard.
316. If denied, defendant must immediately demur or plead.
317. If granted, defendant discharged, unless the case be submitted to the same or another grand jury.
318. Effect of order for resubmission.
319. When new indictment not found.
320. Order to set aside indictment, no bar to another prosecution.

§ 313. Indictment, when set aside on motion.

The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases, but in no other:

1. When it is not found, indorsed and presented as prescribed in sections two hundred and sixty-eight and two hundred and seventy-two;

2. When a person has been permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except as provided in sections two hundred and sixty-two, two hundred and sixty-three and two hundred and sixty-four.

New.

People v. Rutherford (1900), 47 App. Div. 212, 62 N. Y. Supp. 224; People v. Glen (1901), 64 App. Div. 178, 71 N. Y. Supp. 893; People v. Petrea (1882), 30 Hun 101, 112, 1 Crim. Rep. 203, 92 N. Y. 128; Grampp v. De Peyster (1894), 80 Hun 134, 29 N. Y. Supp. 1039; People ex rel. Benton v. Ct. of, etc. (1892), 46 St. Rep. 256, 19 N. Y. Supp. 509; Smith v. Town of Greenwich (1894), 61 St. Rep. 786, 30 N. Y. Supp. 56; People v. Lytle (1896), 74 St. Rep. 724, 40 N. Y. Supp. 153; People v. Brickner (1891), 15 N. Y. Supp. 528; People v. Clark (1891), 14 N. Y. Supp. 643; People v. Edward (1893), 25 N. Y. Supp. 480; People v. Bernardo (1883), 1 Crim. Rep. 244; People v. Clements (1887), 5 Crim. Rep 290, 297; People v. Haines (1888), 6 Crim. Rep. 101; People v. Price (1888), 6 Crim. Rep. 143; People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190; People v. Vaughan (1897), 19 Misc. 299, 42 N. Y. Supp. 959, 11 Crim. Rep. 888; People v. Willie (1898), 23 Misc. 570, 52 N. Y. Supp. 808, 13 Crim. Rep. 255; People v. Winant (1898), 24 Misc. 362, 53 N. Y. Supp. 695; People v. O'Connor (1900), 31 Misc. 370, 688, 15 Crim. Rep. 132, 66 N. Y. Supp. 126; People v. Thomas (1900), 32

Misc. 172; 15 Crim. Rep. 81, 66 N. Y. Supp. 191; People v. Kramer (1900), 32 Misc. 210, 15 Crim. Rep. 257, 66 N. Y. Supp. 383; People v. Scannell (1901), 36 Misc. 41, 72 N. Y. Supp. 449; People v. Farmer (1909), 194 N. Y. 251; People v. Sexton (1904), 187 N. Y. 511; People v. Borgstorm (1904), 178 N. Y. 257; People v. Glen (1903), 173 N. Y. 395, 398; Matter of Montgomery (1908), 126 App. Div. 82; People ex rel. Jerome v. Court of General Sessions (1906), 112 App. Div. 427, 98 N. Y. Supp. 557; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 605, 607, 613, 94 N. Y. Supp. 1087; People v. Bissert, (1902), 71 App. Div. 118, 122, 75 N. Y. Supp. 630; People v. Phifer (1908), 59 Misc. 339, 112 N. Y. Supp. 285; People v. Glasser (1908), 60 Misc. 408; People v. Teal (1908), 60 Misc. 519; People v. Klaw 53 Misc. 159, 104 N. Y. Supp. 482; People v. Booth, (1907), 52 Misc. 343, 102 N, Y. Supp. 62; People v. Steinhardt (1905), 47 Misc. 252, 258, 93 N. Y. Supp. 1026; People v. Bills (1904), 44 Misc. 348, 89 N. Y. Supp. 1091; People v. Sexton, (1904), 42 Misc. 312, 86 N. Y. Supp. 517; People v. Scannell (1902), 37 Misc. 345, 356, 75 N Y. Supp. 500; People v. Montgomery (1901), 36 Misc. 326, 327, 73 N. Y. Supp. 535; People v. Steinhardt (1905), 47 Misc. 252, 260, 93 N. Y. Supp. 1026; People v. Guenther (1909), 65 Misc. 150; Matter of Baldwin, (1909), 65 Misc. 153.

§ 314. Defendant, when precluded from objecting to indictment in any other manner.

If the motion to set aside the indictment be not made, the defendant is precluded from afterward taking the objections mentioned in the last section.

New.

§ 315. Motion, when heard.

The motion to set aside an indictment must be heard at the time of the arraignment, unless, for good cause, the court postpone the hearing to another time.

New.

Grampp v. DePeyster (1894), 80 Hun 134; 29 N. Y. Supp. 1039; Smith v. Town of Greenwich (1894), 61 St. Rep. 786, 30 N. Y. Supp. 56; People v. Gas Light Co. (1888), 6 Crim. Rep. 190; People v. Phifer (1908), 59 Misc. 339, 112 N. Y. Supp. 285.

§ 316. If denied, defendant must immediately demur or plead.

If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

New.

§ 317. If granted, defendant discharged, unless the case be submitted to the same or another grand jury.

If the motion be granted, the court must order that the defend-

ant, if in custody, be discharged therefrom, or if under bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him, unless the court direct that the case be re-submitted to the same or another grand jury.

New.

People v. Clements (1887), 5 Crim. Rep. 289, 299; People v. Rosenthal (1910), 197 N. Y. 394, 401.

§ 318. Effect of order for re-submission.

If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment.

New.

People v. Clements (1887), 5 Crim. Rep. 298; People v. Richards (1887), 5 Crim. Rep. 370; People v. Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 319. When new indictment not found.

Unless a new indictment be found, before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by section three hundred and seventeen.

New.

§ 320. Order to set aside indictment no bar to another prosecution.

An order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same offense.

New.

People v. Rosenthal (1910), 197 N. Y. 394, 401.

CHAPTER VI.

DEMURRER.

SECTION 321. Only pleading for defendant, is demurrer or plea.
322. Demurrer or plea, when put in.
323. Grounds of demurrer.
324. Demurrer, how put in, and its form.
325. When heard.
326. Judgment on demurrer.
327. If allowed, judgment a bar to another prosecution, unless direction that the case be re-submitted to the same or another grand jury.
328. If resubmission not ordered, defendant discharged.
329. Proceedings, if re-submission ordered.
330. If demurrer disallowed, defendant may be permitted to plead; when he must do so, and effect of his omission.
331. When objections, forming ground of demurrer, may be taken at the trial, or in arrest of judgment.

§ 321. Only pleading for defendant, is demurrer or plea.

The only pleading on the part of the defendant is either a demurrer or a plea.

New.

People v. Conroy (1884), 97 N. Y. 62; People v. Ryland (1884), 97 N. Y. 128; People ex rel. Schneider v. Hayes (1905), 108 App. Div. 6, 8, 95 N. Y. Supp. 471; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 613, 94 N. Y. Supp. 1037; People v. Bissert (1902), 71 App. Div. 118, 137, 75 N. Y. Supp. 630; People v. Scannell (1901), 36 Misc. 483, 486, 73 N. Y. Supp. 1067.

§ 322. Demurrer or plea, when put in.

Both the demurrer and the plea must be put in, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

New.

Fanning v. Supreme Council (1901), 34 Misc. 258, 69 N. Y. Supp. 622; People v. Petrea (1882), 1 Crim. Rep. 215; People v. Wendell (1908), 128 App. Div. 438, 112 N. Y. Supp. 887.

§ 323. Grounds of demurrer.

The defendant may demur to the indictment, when it appears upon the face thereof:

1. That the grand jury, by which it was found, had no legal

authority to inquire into the crime charged, by reason of its not being within the local jurisdiction of the county; or

2. That the indictment does not conform substantially to the requirements of sections two hundred and seventy-five and two hundred and seventy-six; or

3. That more than one crime is charged in the indictment within the meaning of sections two hundred and seventy-eight or two hundred and seventy-nine; or

4. That the facts stated do not constitute a crime; or

5. That the indictment contains matter, which, if true, would constitute a legal justification or excuse for the acts charged, or other legal bar to the prosecution.

New.

People v. Conroy (1884), 97 N. Y. 62; People v. Clements (1887), 107 N. Y. 205, 5 Crim Rep. 298, 11 St. Rep. 884; People v. Knatt (1898), 156 N. Y. 308; People v. Hartwell (1901), 166 N. Y. 366, 15 Crim. Rep. 377; Farley v. Mayor (1896), 9 App. Div. 538, 41 N. Y. Supp. 622; People v. Kane (1899), 43 App. Div. 474, 61 N. Y. Supp. 635; People v. Austin (1901), 63 App. Div. 388, 71 N. Y. Supp. 601; People v. Draper (1882), 28 Hun 2, 1 Crim. Rep. 141; People v. D'Argencour (1884), 32 Hun 179; People v. Upton (1885), 38 Hun 111; People v. Richards (1887), 44 Hun 288, 5 Crim. Rep. 370, rev'd 108 N. Y. 137; People v. O'Donnell (1887), 46 Hun 358, 7 Crim. Rep. 347; People v. Gregg (1891), 59 Hun 112, 13 N. Y. Supp. 116; People v. Williams (1895), 92 Hun 356, 36 N. Y. Supp. 511; People v. Quinn (1892), 44 St. Rep. 920, 18 N. Y. Supp. 569; Brusie v. Peck Bros. & Co. (1892), 48 St. Rep. 439; People v. Adler (1893), 55 St. Rep. 669; People v. Stone (1895), 65 St. Rep. 676, 32 N. Y. Supp. 519; People v. Hampton (1895), 71 St. Rep. 356; People v. Camp (1891), 17 N. Y. Supp. 396; People v. Thomas (1900), 32 Misc. 174, 66 N. Y. Supp. 191; People v. Herlihy (1901), 35 Misc. 713, 72 N. Y. Supp. 389, rev'd 66 App. Div. 534, 78 N. Y. Supp. 236; People v. Peck (1884), 2 Crim. Rep. 317, aff'd 96 N. Y. 650; People v. Durrin (1884), 2 Crim. Rep. 334; People v. Wise (1885), 3 Crim. Rep. 310; People v. Huson (1907), 187 N. Y. 99; People v. Wiechers (1904), 179 N. Y. 462; s. c., 94 App. Div. 19, 87 N. Y. Supp. 897; People ex rel. Schneider v. Hayes (1905), 108 App. Div. 6, 8, 95 N. Y. Supp. 471; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 613, 94 N. Y. Supp. 1037; People v. Adams (1903), 85 App. Div. 393, 83 N. Y. Supp. 481; People v. Pierson (1903), 80 App. Div. 418, 81 N. Y. Supp. 214; People v. Foster (1906), 60 Misc. 5; People v. Scannell (1901), 36 Misc. 483, 486, 73 N. Y. Supp. 1067.

§ 324. Demurrer, how put in, and its form.

The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it may be disregarded.

New.

People v. McCarthy (1888), 110 N. Y. 309, 18 St. Rep. 267; People v Bonier (1904), 179 N. Y. 324.

§ 325. When heard.

Upon the demurrer being filed, the objections presented thereby must be heard at such time as the court may appoint.

New.

People v. Somer (1892), 135 N. Y. 457; O'Brien v. Mayor, etc. (1892), 65 Hun 114, 19 N. Y. Supp. 798.

§ 326. Judgment on demurrer.

The court must give judgment upon the demurrer, either allowing or disallowing it; and an order to that effect must be entered upon the minutes.

New

People v. Cooper (1884), 3 Crim. Rep. 119; People v. Canepi (1905), 181 N. Y. 398, 400, 401.

§ 327. If allowed, judgment a bar to another prosecution, unless direction that the case be re-submitted to the same or another grand jury.

If the demurrer be allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

New.

People v. Krivitsky (1901), 60 App. Div. 311, 70 N. Y. Supp. 178, aff'd 168 N. Y. 187; People v. Richards (1887), 44 Hun 288, rev'd 108 N. Y. 137, 5 Crim. Rep. 370; People v. Clements (1887), 5 Crim. Rep. 298; People v. Martin (1902), 77 App. Div. 396, 406, 79 N. Y. Supp. 340; People v. Frazier (1901), 36 Misc. 280, 282, 73 N. Y. Supp. 446; People v. Rosenthal (1910), 197 N. Y. 394, 401.

§ 328. If re-submission not ordered, defendant discharged.

If the court do not direct the case to be resubmitted the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he have deposited money instead of bail, the money must be refunded to him.

New.

People v. Petrea (1883), 92 N. Y. 128; People v. Clements (1887), 5 Crim. Rep. 299; People v. O'Donnell (1887), 7 Crim. Rep. 359, 46 Hun 362; People v. Ct. of Sessions etc. (1892), 8 Crim. Rep. 357, 46 St. Rep. 256, 19 N. Y. Supp. 509.

§ 329. Proceedings, if re-submission ordered.

If the court direct that the case be submitted anew, the same

proceedings must be had thereon as are prescribed in sections three hundred and eighteen and three hundred and nineteen.

New.

People v. Petrea (1883), 92 N. Y. 128; People ex rel. Benton v. Ct. of Sessions (1892), 46 St. Rep. 256, 19 N. Y. Supp. 509; People v. Rosenthal (1910), 197 N. Y. 394, 401.

§ 330. If demurrer disallowed, defendant may be permitted to plead; when he must do so, and effect of his omission.

If the demurrer be disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow. If he do not plead, judgment must be pronounced against him, if the crime charged is a misdemeanor, otherwise a plea of "not guilty" must be entered.

New.

Walters v. Mayhew (1890), 30 St. Rep. 46, 8 N. Y. Supp. 771; People v. Persons (1884), 2 Crim. Rep. 114; People v. Dempsey (1884), 2 Crim. Rep. 119; People v. Cooper (1885), 3 Crim. Rep. 119; People v. Lochner (1907), 177 N. Y. 175; People v. Smith (1907), 56 Misc. 6.

§ 331. When objections, forming ground of demurrer, may be taken at the trial or in arrest of judgment.

The objections mentioned in section three hundred and twenty-three can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a crime, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

New.

People v. Buddensieck (1886), 103 N. Y. 487, 5 Crim. Rep. 69; People v. McCarty (1888), 110 N. Y. 309, 18 St. Rep. 267; People v. Meakim (1892), 133 N. Y. 214, 8 Crim. Rep. 404, 44 St. Rep. 749; People v. Polhamus (1896), 8 App. Div. 135, 40 N. Y. Supp. 491; People v. Kerns (1896), 7 App. Div. 538, 40 N. Y. Supp. 243; People v. Maine (1900), 51 App. Div. 143, 64 N. Y. Supp. 579, rev'd 166 N. Y. 50; People v. Austin (1901), 63 App. Div. 388, 71 N. Y. Supp. 601; People v. Kelly (1883), 31 Hun 226, 2 Crim. Rep. 18; People v. Osterhout (1884), 34 Hun 262; People v. Upton (1885), 38 Hun 110, 111; Grampp v. DePeyster (1894), 80 Hun 134, 29 N. Y. Supp. 1039; People v. Williams (1895), 92 Hun 356, 36 N. Y. Supp. 511, 149 N. Y. 1; People v. Tower (1892), 42 St. Rep. 165, 17 N. Y. Supp. 396; People v. Quinn (1892), 44 St. Rep. 920, 18 N. Y. Supp. 569; People v. Connor (1894), 58 St. Rep. 632; Smith v. Town of Greenwich (1894), 61 St. Rep. 786, 30 N. Y. Supp. 56; People v. Buchanan (1893), 25 N. Y. Supp. 481; People v. Menken (1885), 3 Crim. Rep. 242; People v. Carr (1885), 3 Crim. Rep. 582; People v. Connor (1892), 8 Crim. Rep. 441; People v. Jackson (1908), 191 N. Y. 297; People v. Huson (1907), 187 N. Y. 99; People ex rel. Hummel v. Trial Term

(1906), 184 N. Y. 80, 85; People v. Wiechers (1904), 179 N. Y. 462, 470; s. c., 94 App. Div. 21, 87 N. Y. Supp. 897; People v. Blake (1907), 121 App. Div. 622; People v. Myers (1906), 115 App. Div. 865, 101 N. Y. Supp. 291; People ex rel. Schneider v. Hayes (1905), 108 App. Div. 6, 8, 95 N. Y. Supp. 471; People v. Adams (1903), 85 App. Div. 308, 83 N. Y. Supp. 481; People v. Pierson (1903), 80 App. Div. 418, 81 N. Y. Supp. 214; People v. Cox (1901), 67 App. Div. 344, 347, 73 N. Y. Supp. 774; People v. Goslin (1901), 67 App. Div. 16, 18, 73 N. Y. Supp. 520; People v. Abeel (1904), 45 Misc. 87, 91 N. Y. Supp. 699.

CHAPTER VII.

PLEA.

SECTION 332. Plea of guilty restricted.
333. Plea, how put in.
334. Its form.
335. Plea of guilty, how put in.
336. Plea of insanity.
337. Plea may be withdrawn by permission of the court.
338. What is denied by a plea of not guilty.
339. What may be given in evidence under it.
340, 341. What is deemed a former acquittal.
342. If defendant refuse to answer indictment, plea of not guilty to be entered.

§ 332. Plea of guilty restricted.

There are three kinds of pleas to an indictment:

1. A plea of guilty.

2. A plea of not guilty.

3. A plea of a former judgment of conviction or acquittal of the crime charged, which may be pleaded either with or without the plea of not guilty.

A conviction shall not be had upon a plea of guilty where the crime charged is or may be punishable by death.

New.

People v. Trimble (1892), 131 N. Y. 118, 60 Hun 365, 38 St. Rep. 996, 15 N. Y. Supp. 60; People v. Thorn (1898), 156 N. Y. 300; People ex rel. Egan v. York (1900), 58 App. Div. 338, 65 N. Y. Supp. 696; People v. Petrea (1883), 30 Hun 101, 112, 114, 1 Crim. Rep. 203, 244; People v. O'Connor (1892), 65 Hun 396, 20 N. Y. Supp. 209, 142 N. Y. 132; People v. Smith (1894), 78 Hun 180, 28 N. Y. Supp. 912; People v. McHale (1891), 39 St. Rep. 761, 15 N. Y. Supp. 499; Baker v. Brown (1892), 46 St. Rep. 717, 19 N. Y. Supp. 258; People v. Ct. of Sessions (1892), 19 N. Y. Supp. 509; People v. Cignarale (1888), 6 Crim. Rep. 95; People v. Smith (1902), 172 N. Y. 210, 227; People v. Wendell (1908), 128 App. Div. 437; People v. Scannell (1901), 36 Misc. 483, 486, 73 N. Y. Supp. 1067.

§ 333. Plea, how put in.

Every plea must be oral, and must be entered upon the minutes of the court.

New.

People v. McHale (1891), 39 St. Rep. 761, 15 N. Y. Supp. 497; People v. Welsh (1903), 88 App. Div. 66, 84 N. Y. Supp. 703; People v. Scannell (1901), 36 Misc. 483, 486, 73 N. Y. Supp. 1067.

§ 334. Its form.

The plea must be entered in substantially the following form:

1. If the defendant plead guilty to the crime charged in the indictment, "the defendant pleads that he is guilty;"

2. If he plead guilty to any lesser crime than that charged in the indictment, "the defendant pleads guilty to the crime of"—(naming it).

3. If he pleads not guilty, "the defendant pleads not guilty."

4. If he plead a former conviction or acquittal: "The defendant pleads, that he has already been convicted (or acquitted, as the case may be), of the crime charged in this indictment, by the judgment of the court——— (naming it), rendered at ——— (naming the place), on the ——— day of ———."

New.

People v. McHale (1891), 39 St. Rep. 761, 15 N. Y. Supp. 499; People v. Smith (1902), 172 N. Y. 210; People v. Scannell (1901), 36 Misc. 488, 486, 73 N. Y. Supp. 1067.

People v. Fishman (1909), 64 Misc. 256, 119 N. Y. Supp. 89.

§ 335. Plea of guilty, how put in.

A plea of guilty can only be put in by the defendant himself in open court, except upon an indictment against a corporation, in which case it may be put in by counsel.

New.

Matter of Hagemeyer (1906), 185 N. Y. 473; People v. Welsh, 88 App. Div. 67, 84 N. Y. Supp. 708.

§ 336. Plea of insanity.

Whenever a person in confinement under indictment desires to offer the plea of insanity, he may present such plea at the time of his arraignment, as a specification under the plea of not guilty.

New.

People v. McElvaine (1891), 125 N. Y. 596, 36 St. Rep. 181, 8 Crim. Rep. 156; People v. Grim (1885), 3 Crim. Rep. 320; People v. Murphy (1885), 3 Crim Rep. 338.

§ 337. Plea may be withdrawn by permission of the court.

The court may, in its discretion, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

New.

§ 338. What is denied by a plea of not guilty.

The plea of not guilty is a denial of every material allegation in the indictment.

New.

People v. Bradley (1890), 33 St. Rep. 565, 11 N. Y. Supp. 596; People v. McHale (1891), 39 St. Rep. 761, 15 N. Y. Supp. 499; People v. Petrea (1883), 1 Crim. Rep. 217.

§ 339. What may be given in evidence under it.

All matters of fact, tending to establish a defense, other than that specified in the third subdivision of section three hundred and thirty-two, may be given in evidence under the plea of not guilty.

New.

People v. McHale (1891), 15 N. Y. Supp. 499; People v. Petrea (1883), 1 Crim. Rep. 217; People v. Durrin (1884), 2 Crim. Rep. 333; People v. Cignarale (1888), 6 Crim. Rep. 95.

§ 340. What is deemed a former acquittal.

If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon an objection to its form or substance, without a judgment of acquittal, it is not deemed an acquittal of the same offense.

Derivation: 4 R. S. 701 § 24.

People v. Meakim (1891), 61 Hun 328, 15 N. Y. Supp. 917, 133 N. Y. 214, 40 St. Rep. 686; People v. Smith (1902), 172 N. Y. 210, 227.

§ 341. What is deemed a former acquittal.

When, however, the defendant was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the indictment on which he was acquitted.

Derivation: 4 R. S. 701 § 25.

People v. Smith (1902), 172 N. Y. 210, 227.

§ 342. If defendant refuse to answer indictment, plea of not guilty to be entered.

If the defendant refuse to answer an indictment by demurrer or plea, a plea of not guilty must be entered.

Derivation: 4 R.S. 730 § 70.

People v. McHale (1891), 39 St. Rep. 761, 15 N. Y. Supp. 497; People v. Osterhout (1884), 3 Crim. Rep. 445, 34 Hun 262; People v. Welsh (1903), 88 App. Div. 65, 67, 84 N. Y. Supp. 708.

CHAPTER VIII.

REMOVAL OF THE ACTION BEFORE TRIAL.

SECTION 343. Existing writs and proceedings, to remove indictment before trial abolished.
344. When, and in what case, indictment may be removed before trial.
345. If former trial were had, indictment may be removed before the new trial.
346. Application for removal, how made.
347. Stay of trial, how obtained, to enable defendant to apply for removal.
348. Decision on application for stay, to be indorsed on papers and filed.
349. If application for stay be denied, no other application can be made.
350. Violation of last section a misdemeanor and contempt, and order of removal to be vacated.
351. Order of removal to be filed, and pleadings and proceedings to be transmitted.
352. Proceedings on removal, if defendant be in custody.
353. Order for removal must be filed, before a juror is sworn. Authority of the court to which indictment is removed.

§ 343. Existing writs and proceedings, to remove indictment before trial abolished.

All writs and other proceedings heretofore existing, for the removal, upon the application of the defendant, or criminal actions prosecuted by indictment, from one court to another before trial, are abolished.

New.

People v. Hallen (1900), 48 App. Div. 40, 62 N. Y. Supp. 573; People v. Jackson (1906), 114 App. Div. 700, 100 N. Y. Supp. 126; People v. Jackson (1906), 114 App. Div. 700, 100 N. Y. Supp. 126.

§ 344. When, and in what cases, indictment may be removed before trial.

A criminal action, prosecuted by indictment, may, at any time before trial, on the application of the defendant, be removed from the court in which it is pending, as provided in this chapter, in *the following* cases:

1. From a county court or a city court, to the supreme court held in the same county, for good cause shown;

2. From the supreme court or a county court, or a city court to a term of the supreme court held in another county, on the ground that a fair and impartial trial can not be had in the county or city where the indictment is pending. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

Derivation: 4 R. S. 731 § 76; L. 1859 ch. 462 § 8.

People v. McLaughlin (1896), 150 N. Y. 365; People v. Emerson (1889), 53 Hun 437, 6 N. Y. Supp. 274; People v. Clark (1891), 15 N. Y. Supp. 79; Hirshkind v. Priv. Coach, etc. (1895), 67 St. Rep. 324, 33 N. Y. Supp. 618; People v. Scannell (1901), 35 Misc. 559, 72 N. Y. Supp. 25; People v. Diamond (1901), 36 Misc. 74, 72 N. Y. Supp. 179; People v. Jackson (1906), 114 App. Div. 700, 100 N. Y. Supp. 126.

§ 345. If former trial were had, indictment may be removed before the new trial.

If one or more trials be had, and a new trial is necessary, either by reason of the discharge of a jury without a verdict, or of the granting of a new trial, the removal may be allowed at any time before the new trial.

Derivation: L. 1859 ch. 462 § 8.

People v. McLaughlin (1896), 150 N. Y. 365.

§ 346. Application for removal, how made.

The application for the order of removal must be made to the supreme court, at a special term in the district, upon notice of at least ten days to the district attorney of the county where the indictment is pending, with a copy of the affidavits or other papers on which the application is founded.

Derivation: 4 R. S. 731 §§ 76, 77.

People v. McLaughlin (1896), 150 N. Y. 365, 2 App. Div. 411, 37 N. Y. Supp. 998, 13 Misc. 289, 35 N. Y. Supp. 73; Matter of Montgomery (1906), 126 App. Div. 77; People v. Jackson (1906), 114 App. Div. 700, 100 N. Y. Supp. 126.

§ 347. Stay of trial, how obtained to enable defendant to apply for removal.

To enable the defendant to make the application, a judge of the supreme court may, in his discretion, upon good cause shown by affidavit, make an order staying the trial of the indictment, until the application can be made and decided.

New.

People v. McLaughlin (1896), 150 N. Y. 365, 2 App. Div. 411, 37 N. Y. Supp. 998, 13 Misc. 290, 35 N. Y. Supp. 73; People v. Jackson (1906), 114 App. Div. 708, 100 N. Y. Supp. 126.

§ 348. Decision on application for stay, to be indorsed on papers and filed.

When an application for an order to stay the trial is made to the supreme court, it must indorse its decision on the affidavits or other papers presented, and cause them to be immediately filed with the clerk of the court in which the indictment is pending.

New.

§ 349. If application for stay be denied, no other application can be made.

If the application for an order to stay the trial has been made before one judge and denied, a similar application cannot be made to another judge.

New.

§ 350. Violation of last section a misdemeanor and contempt, and order of removal to be vacated.

A violation of the last section is punishable not only as a misdemeanor but as a contempt of the court in which the indictment is pending; and that court must vacate an order of removal made in violation thereof.

New.

People ex rel. Munsell v. Oyer, etc. (1885), 3 Crim. Rep. 216.

§ 351. Order of removal to be filed, and pleadings and proceedings to be transmitted.

If the supreme court order the removal of the action, a certified copy of the order for the purpose must be delivered to and filed with the clerk of that court where the indictment is pending, who must thereupon transmit the same, with the pleadings and proceedings in the action, including all undertakings for the appearance of the defendant or of the witnesses, or a certified copy of the same, to the court to which the action is removed.

New.

People v. Hall (1901). 169 N. Y. 184, 192; People v. Fishman (1909), 64 Misc. 256, 119 N. Y. Supp. 89.

§ 352. Proceedings on removal, if defendant be in custody.

If the defendant be in custody, and the removal be into another county than that where the indictment is pending, the order must *provide for the* removal of the defendant, by the sheriff of the

county where he is imprisoned, to the custody of the proper officer of the county to which the action is removed, and he must be forthwith removed accordingly.

New.

§ 353. Order for removal must be filed before a juror is sworn; authority of the court to which indictment is removed.

An order for the removal of the action is of no effect unless a certified copy thereof be filed, as required by section three hundred and fifty-one, before a juror is sworn to try the indictment. When thus filed, the court to which the action is removed must proceed to trial and judgment therein.

New.

People v. Hall (1901), 169 N. Y. 184, 192; People v. Fishman (1909), 64 Misc. 256, 119 N. Y. Supp. 89.

TITLE VI.

OF THE PROCEEDINGS OF THE INDICTMENT BEFORE TRIAL.

CHAPTER I. The mode of trial.
II. Formation of the trial jury.
III. Challenging the jury.

CHAPTER I.

THE MODE OF TRIAL.

SECTION 354. Issue of fact defined.
355. How tried.
356. Appearance.
357. Preparation for trial.

§ 354. Issue of fact defined.

An issue of fact arises,

1. Upon a plea of not guilty; or

2. Upon a plea of a former conviction or acquittal of the same crime.

New.

People ex rel. Mullen v. Coler (1901), 61 App. Div. 540, 70 N. Y. Supp. 639; People v. Connor (1892), 65 Hun 396, 20 N. Y. Supp. 209; People v. Haight (1883), 3 Crim. Rep. 62; People v. Fanshawe (1892), 8 Crim. Rep. 344.

§ 355. How tried.

An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed, by order of the supreme court, into another county, as provided in the second subdivision of section three hundred and forty-four. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

Derivation: 4 R. S. 733 § 1.

People ex rel. Mullen v. Coler (1901), 61 App. Div. 540, 70 N. Y. Supp. 639; People v. Haight (1883), 3 Crim. Rep. 62; People v. Smith (1902), 172 N. Y. 210, 227.

§ 356. Appearance.

If the indictment be for a misdemeanor, the trial may be had

in the absence of the defendant, if he appear by counsel; but if the indictment be for a felony, the defendant must be personally present.

Derivation: 4 R. S. 734 § 13.

People v. Thorn (1898), 156 N. Y. 296; People v. Miller (1901), 63 App. Div. 13, 71 N. Y. Supp. 212; People v. Palmer (1887), 5 Crim. Rep. 106, 43 Hun 407; Vogel v. American Bridge Co. (1903), 88 App. Div. 68, 84 N. Y. Supp. 799; People v. Welsh (1903), 88 App. Div. 68, 84 N. Y. Supp. 708.

§ 357. Preparation for trial.

After his plea, the defendant is entitled to at least two days to prepare for his trial, if he require it.

New.

CHAPTER II.

FORMATION OF THE TRIAL JURY.

SECTION 358. Jurors in criminal courts.

§ 358. Jurors in criminal courts.

The trial jury is formed, as prescribed by the Code of Civil Procedure and the Judiciary Law. (Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

New.

People v. Johnston (1888), 110 N. Y. 134, 46 Hun 672, 7 Crim. Rep. 408; People v. Jackson (1888), 111 N. Y. 362, 6 Crim. Rep. 399; People v. Decker (1898), 157 N. Y. 190; People v. Wennerholm (1901), 166 N. Y. 576, 15 Crim. Rep. 398.

CHAPTER III.

CHALLENGING THE JURY.

CTION 359. Definition and division of challenges.
360. When there are several defendants, they must unite in their challenges.
361. Challenge to the panel, defined.
362. Upon what founded.
363. When and how taken.
364. If sufficiency of the facts be denied, adverse party may except; exception, how made and tried.
365. If exception overruled, court may allow denial of challenge; if allowed, may permit challenge to be amended.
366. Denial of challenge, how made, and trial thereof.
367. Who may be examined on trial of challenge.
368. If challenge allowed, jury to be discharged; if disallowed, jury to be impanneled.
369. Defendant to be informed of his right to challenge an individual juror.
370. Kinds of challenge to individual juror.
371. Challenge, when taken.
372. Peremptory challenge.
373. Number of peremptory challenges to which defendant is entitled.
374. Definition and kinds of challenge for cause.
375. General causes of challenge.
376. Particular causes of challenge.
377. Grounds of challenge for implied bias.
378. Grounds of challenge for actual bias.
379. Exemption, not a ground of challenge.
380. Causes of challenge, how stated.
381. Exceptions to challenge and denial thereof.
382. Challenge, how tried, if denied.
383. Juror challenged may be examined as a witness.
384. Rules of evidence on trial of challenge.
385. Challenges, first by the people and then by defendant.
386. Order of challenges.
387. Jury to be sworn, etc.

§ 359. Definition and division of challenges.

A challenge is an objection made to trial jurors, and is of two nds:

1. To the panel;
2. To an individual juror.

Derivation: 6 R. S. 784 § 11, See L. 1847, ch 134 § 8.

People v. Petrea (1883), 30 Hun 108, 1 Crim. Rep. 205; People v. Scannell 902), 37 Misc. 345, 358, 75 N. Y. Supp. 500.

§ 360. When there are several defendants, they must unite in their challenges.

When several defendants are tried together they cannot sever their challenges, but must join therein.

New.

§ 361. Challenge to the panel, defined.

A challenge to the panel is an objection made to all the trial jurors returned, and may be taken as well to the panel returned for the term, as to an additional panel order to complete the jury.

New.

People v. Jackson (1888), 111 N. Y. 362; People ex rel. Bork v. Gilbert (1888), 1 Crim. Rep. 399.

§ 362. Upon what founded.

A challenge to the panel can be founded only on a material departure, to the prejudice of the defendant, from the forms prescribed by the Code of Civil Procedure and the Judiciary Law in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn. (Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

Derivation: 3 R. S. 420 § 57.

People v. Burgess (1897), 153 N. Y. 561; People v. Schmidt (1901), 168 N. Y. 577; People v. Petrea (1883), 30 Hun 103, 105, 1 Crim. Rep. 205; People v. Clark (1891), 14 N. Y. Supp. 643; People v. McQuade (1888), 21 Abb. N. C. 449; People v. Hall (1901), 169 N. Y. 184, 193; People v. Jackson (1908), 191 N. Y. 297; People v. Ebelt (1905), 180 N. Y. 470, 475.

§ 363. When and how taken.

A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying distinctly the facts constituting the ground of challenge.

New.

People v. Petrea (1883), 30 Hun 103, 1 Crim. Rep. 205; People v. Olmstead (1893), 74 Hun 328, 26 N. Y. Supp. 818; People v. Wilber (1891), 39 St. Rep. 743, 15 N. Y. Supp. 436; Bourdon v. Martin (1893), 56 St. Rep. 314, 26 N. Y. Supp. 378.

§ 364. If sufficiency of the facts be denied, adverse party may except; exception, how made and tried.

If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the *minutes of the* court; and thereupon the court must proceed to

try the sufficiency of the challenge, assuming the facts alleged therein to be true.

New.

People v. Petrea (1883), 30 Hun 103, 1 Crim. Rep. 205.

§ 365. If exception overruled, court may allow denial of challenge; if allowed, may permit challenge to be amended.

If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting, to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge.

New.

People v. Petrea (1883), 30 Hun 103, 1 Crim. Rep. 205.

§ 366. Denial of challenge, how made, and trial thereof.

If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court; and the court must proceed to try the question of fact.

New.

People v. Petrea (1883), 30 Hun 103, 1 Crim. Rep. 205; People v. Wilber (1891), 39 St. Rep. 743, 15 N. Y. Supp. 435.

§ 367. Who may be examined on trial of challenge.

Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

New.

§ 368. If challenge allowed, jury to be discharged; if disallowed, jury to be impanneled.

If, either upon an exception to the challenge or a denial of the facts, the challenge be allowed, the court must discharge the jury, so far as the trial of the indictment in question is concerned. If the challenge be disallowed, the court must direct the jury to be impanneled.

New.

People v. Welch (1883), 1 Crim. Rep. 488.

§ 369. Defendant to be informed of his right to challenge an individual juror.

Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an

individual juror, he must do so when the juror appears, and before he is sworn.

New.

People v. Carpenter (1886), 102 N. Y. 238; People v. Mack (1898), 35 App. Div. 117, 54 N. Y. Supp. 698; Matter of McDonald (1884), 2 Crim. Rep. 98; People v. Thayer (1909), 61 Misc. 573, 115 N. Y. Supp. 855.

§ 370. Kinds of challenge to individual juror.

A challenge to an individual juror may be taken either by the people or by the defendant, and is either

1. Peremptory, or
2. For cause.

New.

People v. Thayer (1909), 61 Misc. 573, 115 N. Y. Supp. 855.

§ 371. Challenge, when taken.

A challenge must be taken when the juror appears, and before he is sworn; but the court may, in its discretion, for good cause, set aside a juror at any time before evidence is given in the action.

New.

People v. Hughes (1893), 137 N. Y. 29, 8 Crim. Rep. 451, 46 St. Rep. 415, 50 St. Rep. 65, 19 N. Y. Supp. 550; People v. Mack (1898), 35 App. Div. 117, 54 N. Y. Supp. 698; People v. Carpenter (1886), 3 Crim. Rep. 98, 36 Hun 315, aff'd 102 N. Y. 247; People v. Beckwith (1887), 5 Crim. Rep. 232, 103 N. Y. 369; People v. Childs (1903), 87 App. Div. 476, 84 N. Y. Supp. 858.

§ 372. Peremptory challenge.

A peremptory challenge is an objection to a juror, for which no reason need be given, but upon which the court must exclude him.

New.

People v. Hughes (1892), 137 N. Y. 29, 46 St. Rep. 415, 50 St. Rep. 65, 19 N. Y. Supp. 550; People v. Sharp (1886), 5 Crim. Rep. 158.

§ 373. Number of peremptory challenges.

Peremptory challenges must be taken in number as follows:

1. If the crime charged be punishable with death, thirty;
2. If punishable with imprisonment for life, or for a term of ten years or more, twenty;
3. In all other cases, five.

Derivation: 4 R. S. 734 § 9 : L. 1858 ch. 332 § 1.

People v. Keating (1891), 61 Hun 261, 40 St. Rep. 829, 16 N. Y. Supp. 748; People v. Wah Lee Mon (1891), 13 N. Y. Supp. 767.

§ 374. Definition and kinds of challenge for cause.

A challenge for cause is an objection to a particular juror, and is *either,*

1. General, that the juror is disqualified from serving in any case; or

2. Particular, that he is disqualified from serving in the case on trial.

New.

§ 375. General causes of challenge.

General causes of challenge are:

1. A conviction for a felony;

2. A want of any of the qualifications prescribed by the Judiciary Law, to render a person a competent juror. (Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

New.

People v. Petrea (1883), 30 Hun 104, 1 Crim. Rep. 206; People v. Hughes (1892), 50 St. Rep. 65; People v. Welch (1883), 1 Crim. Rep. 488.

§ 376. Particular causes of challenge.

Particular causes of challenge are of two kinds:

1. For such a bias, as, when the existence of the facts is ascertained, does in judgment of law disqualify the juror, and which is known in this Code as implied bias;

2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that such juror cannot try the issue impartially, and without prejudice to the substantial rights of the party challenging, and which is known in this Code as actual bias. But the previous expression or formation of an opinion or impression in reference to the guilt or innocence of the defendant, or a present opinion or impression in reference thereto, is not a sufficient ground of challenge for actual bias, to any person otherwise legally qualified, if he declare on oath, that he believes that such opinion or impression will not influence his verdict, and that he can render an impartial verdict according to the evidence, and the court is satisfied, that he does not entertain such a present opinion or impression as would influence his verdict.

Derivation: L. 1872 ch. 475.

People v. Cornetti (1883), 92 N. Y. 85; People v. Casey (1884), 96 N. Y. 115, 2 Crim. Rep. 201; People v. O'Neil (1888), 109 N. Y. 251, 14 St. Rep. 829; People v. Wilson (1888), 109 N. Y. 345; People v. McQuade (1888), 110 N. Y. 284, 21 Abb. N. C. 417; People v. Martell (1893), 138 N. Y. 595; People v. Wilmarth (1898), 156 N. Y. 568; Matter of Chapman (1900), 162 N. Y. 457; Enright v. Brooklyn Heights R. R. Co. (1898), 26 App. Div. 538, 50 N. Y. Supp. 609; People v. Otto (1885), 38 Hun 98, 101 N. Y. 690; People v. Carpenter (1886), 38 Hun 492; People v. McGonegal (1892), 48 St. Rep. 903; People v. Hughes

(1892), 50 St. Rep. 65; Laidlaw v. Sage (1896), 73 St. Rep. 473, 37 N. Y. Supp. 770, 2 App. Div. 380; People v. McLaughlin (1896), 73 St. Rep. 500, 2 App. Div. 427, 37 N. Y. Supp. 1005; People v. Miller (1903), 81 App. Div. 256, 80 N. Y. Supp. 1070; People v. Hosier (1909), 132 App. Div. 146, 116 N. Y. Supp. 911.

§ 377. Grounds of challenge for implied bias.

A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the ninth degree, to the person alleged to be injured by the crime charged, or on whose complaint the prosecution was instituted, or to the defendant,

2. Bearing to him the relation of guardian or ward, attorney or client, or client of the attorney, or counsel for the people, or defendant, master or servant, or landlord or tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury which has tried another person for the crime charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it,

7. Having served as a juror, in a civil action brought against the defendant, for the act charged as a crime;

8. If the crime charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Derivation: 4 R. S. 734 § 8.

People v. McQuade (1888), 110 N. Y. 284, 6 Crim. Rep. 1, 21 Abb. N. C. 447; People v. Carolin (1889), 115 N. Y. 658, 7 Crim. Rep. 125; People v. Wood (1892), 131 N. Y. 617; People v. Mack (1898), 35 App. Div. 115, 54 N. Y. Supp. 698; People v. Petrea (1883), 30 Hun 104, 1 Crim. Rep. 205; People v. Carpenter (1886), 38 Hun 492; People v. Clark (1891), 62 Hun 84, 16 N. Y. Supp. 473, 41 St. Rep. 448; People v. Brooks (1892), 43 St. Rep. 294; People v. Hughes (1892), *50 St. Rep. 65; People* v. Clark (1891), 16 N. Y. Supp. 473.

§ 378. Grounds of challenge for actual bias.

A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section three hundred and seventy-six, and for no other cause.

New.

People v. McQuade (1888), 110 N. Y. 284, 21 Abb. N. C. 447.

§ 379. Exemption not a ground of challenge.

An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

New.

§ 380. Causes of challenge, how stated.

In a challenge for implied bias, one or more of the causes stated in section three hundred and seventy-seven must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section three hundred and seventy-six must be alleged. In either case the challenge may be oral, but must be entered upon the minutes of the court.

New.

People v. Otto (1886), 101 N. Y. 690, 4 Crim. Rep. 155; People v. Larubia (1893), 69 Hun 200, 140 N. Y. 87, 23 N. Y. Supp. 580.

§ 381. Exceptions to challenge and denial thereof.

The adverse party may except to the challenge, in the same manner as to a challenge to the panel; and the same proceedings must be had thereon, as prescribed in section three hundred and sixty-four, except that, if the challenge be allowed, the jury must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

New.

§ 382. Challenge, how tried, if denied.

If the facts be denied, the challenge must be tried by the court which must either allow or disallow the same and direct an entry accordingly on the minutes. If the challenge be allowed, the juror must be discharged.

Derivation: L. 1873 ch. 427.

People v. Petrea (1883), 30 Hun 103.

§ 383. Juror challenged may be examined as a witness.

Upon the trial of a challenge to an individual juror, the juror

challenged may be examined as a witness, to prove or disprove the challenge; and is bound to answer every question pertinent to every inquiry therein.

New.

People v. Welch (1883), 1 Crim. Rep. 488; Deutschman v. Third Ave. R. R. Co. (1903), 87 App. Div. 514, 84 N. Y. Supp. 887; People v. Hosier (1909), 132 App. Div, 146, 116 N. Y. Supp. 911.

§ 384. Rules of evidence on trial of challenge.

Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues, govern the admission or exclusion of testimony, on the trial of the challenge.

New.

People v. Welch (1883) 1 Crim. Rep. 488; People v. Hosier (1909), 132 App. Div. 146, 116 N. Y. Supp. 911.

§ 385. Challenges, first by people and then by the defendant.

Challenges to an individual juror must be taken first by the people and then by the defendant.

New.

People v. McQuade (1888), 110 N. Y. 284, 21 Abb. N. C. 417; People v. McGonegal (1892), 136 N. Y. 62, 42 St. Rep. 310, 48 St. Rep. 901, 17 N. Y. Supp. 148; People v. Miles (1894), 62 St. Rep. 347; People v. Elliot (1901), 66 App. Div. 179, 180, 73 N. Y. Supp. 279.

§ 386. Order of challenges.

Challenges of either party must be taken:

1. To the panel;
2. To an individual juror, for a general disqualification;
3. To an individual juror, for implied bias;
4. To an individual juror, for actual bias;
5. Peremptory.

New.

People v. Welch (1883), 1 Crim. Rep. 488.

§ 387. Jury to be sworn, etc.

The first twelve persons who appear, as their names are drawn and called, who are approved as indifferent between the parties, and are not discharged or excused, must be sworn; and constitute the jury to try the issue.

Derivation: 3 R. S. 420 § 189.

TITLE VII.

OF THE TRIAL.

CHAPTER I. The trial.
II. Conduct of the jury, after the cause is submitted to them.
III. The verdict.

CHAPTER I.

THE TRIAL.

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420. Charge to jury.
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422. When defendant on bail appears for trial, he may be committed.

§ 388. In what order trial to proceed.

The jury having been impanneled and sworn, the trial must proceed in the following order:

1. The district attorney, or other counsel for the people, must open the case, and offer the evidence in support of the indictment;

2. The defendant or his counsel may then open his defense, and offer his evidence in support thereof;

3. The parties may then, respectively, offer rebutting testimony, but the court, for good reason, in furtherance of justice, may permit them to offer evidence upon their original case;

4. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the defendant or his counsel must commence, and the counsel for the people conclude the argument to the jury;

5. The court must then charge the jury.

Derivation: 4 R. S. 735 § 14.

People v. Sickles (1898), 156 N. Y. 545; People v. Benham (1899) 160 N. Y. 436; People v. Connor (1892), 65 Hun 396, 48 St. Rep. 28, 20 N. Y. Supp. 209.

§ 389. Defendant presumed innocent, until contrary proved; in case of reasonable doubt, entitled to acquittal.

A defendant in a criminal action is presumed to be innocent, until the contrary be proved; and in case of reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

New.

People v. Ledwon (1897), 153 N. Y. 10; People v. Sickles (1898), 156 N. Y. 550, 26 App. Div. 476; 50 N. Y. Supp. 377; People v. Ray (1899), 36 App. Div. 395, 55 N. Y. Supp. 410; People v. Fielding (1899), 36 App. Div. 415, 55 N. Y. Supp. 530; People v. Kelly (1896), 11 App. Div. 498, 42 N. Y. Supp. 756; Grant v. Riley (1897), 15 App. Div. 194, 44 N. Y. Supp. 238; Diefendorf v. Diefendorf *(1890), 29 St.* Rep. 122, 8 N. Y. Supp. 617; People v. Benedict (1892), 49 St. Rep. *286, 21 N. Y. Supp. 58*; People v. Friedland (1896), 73 St. Rep. 518, 37 N. Y.

Supp. 974; People v. Brickner (1891), 15 N. Y. Supp. 580; People v. Downs (1890), 7 Crim. Rep. 488, 56 Hun 11, 8 N. Y. Supp. 521; People v. Stephenson (1895), 11 Misc. 142; People v. Gluck (1907), 188 N. Y. 172; People v. Egnor (1908), 175 N. Y. 429; People v. Reiss (1906), 114 App. Div. 485, 99 N. Y. Supp. 1002; People ex rel. Gow v. Bingham (1907), 57 Misc. 71, 107 N. Y. Supp. 1011; People v. Dinser (1905), 49 Misc. 82, 86, 98 N. Y. Supp. 814; People v. Dillon (1910), 197 N. Y. 254, 259.

§ 390. When reasonable doubt of which degree he is guilty, he must be convicted of the lowest.

When it appears, that a defendant has committed a crime, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only.

New.

People ex rel. Young v. Stout (1894), 68 St. Rep. 154, 80 N. Y. Supp. 898; People v. Sullivan (1903), 173 N. Y. 122, 130; Petty v. Emery (1904), 96 App. Div. 35, 88 N. Y. Supp. 823; People v. Fabian (1908), 126 App. Div. 95; People v. Foster (1908), 60 Misc. 14; People v. Fiorentino (1910), 197 N. Y.——

§ 391. Separate trial of defendants jointly indicted.

When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately. In other cases, defendants, jointly indicted, may be tried separately or jointly, in the discretion of the court.

Derivation: 4 R. S. 735 § 20.

People v. Cotto (1892), 101 N. Y. 577; People v. Trimble (1892), 42 St. Rep. 716; Drake v. Weinman & Co. (1895), 67 St. Rep. 18, 33 N. Y. Supp. 177; People v. McElveney (1901), 36 Misc. 316, 73 N. Y. Supp. 639.

§ 392. Rules of evidence in civil cases applicable in criminal cases, except where otherwise provided in this Code.

The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this Code. Whenever in any criminal proceedings a child actually or apparently under the age of twelve years offered as a witness does not in the opinion of the court or magistrate understand the nature of an oath, the evidence of such child may be received though not given under oath if, in the opinion of the court or magistrate such child is possessed of sufficient intelligence to justify the reception of the evidence. But no person shall be held or convicted of an offense upon such testimony unsupported by other evidence. (Amended by L. 1892, ch. 279. In effect Sept. 1, 1892.)

Derivation: 4 R. S. 735 § 14.

People v. Murphy (1886), 101 N. Y. 126; People v. McLaughlin (1896), 2 App.

Div. 434, 73 St. Rep. 506, 37 N. Y. Supp. 1005; People v. Hess (1896), 8 App. Div. 146, 40 N. Y. Supp. 486; People v. Garrahan (1897), 19 App. Div. 349, 46 N. Y. Supp. 497; People v. Gralheranzo (1900), 54 App. Div. 361, 66 N. Y. Supp. 514; People v. Burns (1884), 33 Hun 300; People v. Kelly (1885), 35 Hun 304, 8 Crim. Rep. 46; People v. Hill (1892), 65 Hun 428, 47 St. Rep. 779, 20 N. Y. Supp. 187: People v. Smith (1895), 86 Hun 488, 33 N. Y. Supp. 989; Von Bokkelen v. Berdell (1891), 41 St. Rep. 314; People v. Lewis (1891), 42 St. Rep. 772, 16 N. Y. Supp. 881; People v. O'Brien (1893), 56 St. Rep. 353, 26 N. Y. Supp. 812; People v. Lewis (1891), 16 N. Y. Supp. 884; People v. Burns (1884), 2 Crim. Rep. 427; People v. Donohue (1906), 100 N. Y. Supp. 203; People v. Sexton (1907), 187 N. Y. 512, 114 App. Div. 831; People v. Johnson (1906), 185 N. Y. 227; People v. De Garmo (1902), 78 App. Div. 46. 49, 76 N. Y. Supp. 477; People v. Sexton (1903), 42 Misc. 313, 86 N. Y. Supp. 517; People v. Stanley (1909), 130 App. Div. 64, 67, 114 N. Y. Supp. 395: People v. Bromwich (1909), 135 App. Div. 67.

§ 393. Defendant as witness.

The defendant in all cases may testify as a witness in his own behalf, but his neglect or refusal to testify does not create any presumption against him.

Derivation: L. 1869 ch. 678.

People v. Tice (1892), 131 N. Y. 651, 43 St. Rep. 576; People v. Grossman (1901), 168 N. Y. 51; People v. Rose (1889), 52 Hun 38; 4 N. Y. Supp. 787; Falcott v. Levy (1892), 47 St. Rep. 399, 20 N. Y. Supp. 440; People v. Fitzgerald (1897), 80 St. Rep. 1021; People v. Hinksman (1908), 192 N. Y. 431; People v. Ryan, 120 App. Div. 277; People v. Hart (1906), 114 App. Div. 18, 100 N. Y. Supp. 1134.

§ 393-a. Persons jointly indicted, competent witnesses for each other.

All persons jointly indicted shall, upon the trial of either, be competent witnesses for each other the same as if not included in the same indictment. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1876, ch. 182, § 1.

§ 394. Compensation of witness.

The rules as to the compensation of witnesses attending trials in criminal cases, prescribed by special statutes, are continued as there defined.

Derivation: 4 R. S. 729 § 65, Id. 758 § 15; L. 1869 ch. 155 § 1.

§ 395. Confession of defendant, when evidence, and its effect.

A confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, *or unless made upon* a stipulation of the district attorney, that

he shall not be prosecuted therefor; but is not sufficient to warrant his conviction, without additional proof that the crime charged has been committed.

New.

People v. Jaehne (1886), 103 N. Y. 182; People v. Mondon (1886), 103 N. Y. 211, 38 Hun 190; People v. McCallam (1886), 103 N. Y. 587, 3 Crim. Rep. 196, 5 Crim. Rep. 152; People v. Druse (1886), 103 N. Y. 655, 5 Crim. Rep. 20; People v. Deacons (1888), 109 N. Y. 374; People v. Chapleau (1890), 121 N. Y. 266, 30 St. Rep. 992; People v. Kennedy (1899), 159 N. Y. 344, 355; People v. Meyer (1900), 162 N. Y. 368; People v. Colletta (1901), 65 App. Div. 571, 72 N. Y. Supp. 903; People v. McGloin (1882), 28 Hun 152, 156, 1 Crim. Rep. 110, 159; People v. Kelly (1885), 37 Hun 161, 1 Crim. Rep. 415; People v. Kurtz (1886), 42 Hun 338; People v. Kief (1890), 58 Hun 343; 11 N. Y. Supp. 926; People v. Bishop (1893), 69 Hun 106, 23 N. Y. Supp. 243; People v. MacKinder (1894), 80 Hun 46, 29 N. Y. Supp. 842; People v. Kief (1890), 34 St. Rep. 532, 11 N. Y. Supp. 930; People v. Cassidy (1891), 39 St. Rep. 28, 44 St. Rep. 870, 14 N. Y. Supp, 849; People v. Linzey (1894), 61 St. Rep. 241, 29 N. Y. Supp. 560; People v. Buchanan (1893), 25 N. Y. Supp. 480; Notara v. De Kamalaris (1898) 22 Misc. 341, 49 N. Y. Supp. 216; People v. Welch (1883), 1 Crim. Rep. 488; People v. Carr (1885), 3 Crim. Rep. 581; People v. Randazzio (1909), 194 N. Y. 147; People v. Brasch (1908), 193 N. Y. 58; People v. Rogers (1908), 192 N. Y. 350; People v. Burness (1904), 178 N. Y. 431; People v. White (1903), 176 N. Y. 348; People v. Bedeft (1908), 125 App. Div. 860, 110 N. Y. Supp. 750; People v. Colletta (1901), 65 App. Div. 570, 72 N. Y. Supp. 903; People v. Kent (1903), 41 Misc. 192, 83 N. Y. Supp. 948.

§ 396. Evidence on trial for treason.

Upon a trial for treason the defendant cannot be convicted, except upon the testimony of two witnesses to the same overt act, or of one witness to one overt act, and another witness to a different overt act of the same treason. But if two or more distinct treasons, of different kinds, be alleged in the indictment, two witnesses to prove different treasons are not sufficient to warrant a conviction.

Derivation: 4 R. S. 735 § 15.

People v. Fabian (1908), 126 App. Div. 96, 111 N. Y. Supp. 140.

§ 397. Same.

Upon a trial for treason, evidence cannot be admitted, of an overt act not expressly charged in the indictment; nor can the defendant be convicted, unless one or more overt acts be expressly alleged therein.

Derivation: 4 R. S. 735 § 16.

People v. Fabian (1908), 126 App. Div. 96, 111 N. Y. Supp. 140.

§ 398. Evidence on trial for conspiracy.

Upon a trial for conspiracy, in a case where an overt act is

necessary to constitute the crime, the defendant cannot be convicted, unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but any other overt act, not alleged in the indictment, may be given in evidence.

Derivation: 4 R. S. 735 § 17.

Bedlow v. Stillwell (1899), 158 N. Y. 297; People v. Willis (1899), 158 N. Y. 399, 24 Misc. 539, 54 N. Y. Supp. 52; People v. Miles (1908), 123 App. Div. 875, 108 N. Y. Supp. 510.

§ 398-a. Evidence on trial for abortion.

In all prosecutions under and in pursuance of article six of the penal law, the dying declarations of the woman whose death is produced by any of the means set forth in said article, shall be admitted in evidence subject to the same restrictions as in cases of homicide. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.

Derivation: L. 1872, Ch. 181, § 6, as amended by L. 1875, Ch. 352, § 1.

§ 399. Conviction cannot be had on testimony of accomplice, unless corroborated.

A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime. (Amended by L. 1882, ch. 360.)

New.

People v. Hooghkerk (1884), 96 N. Y. 149, 2 Crim. Rep. 215; People v. Ryland (1884), 97 N. Y. 126, 28 Hun 568, 1 Crim. Rep. 128, 2 Crim. Rep. 444; People v. Vedder (1885), 98 N. Y. 630; People v. Everhardt (1887), 104 N. Y. 591, 6 Crim. Rep. 238; People v. Elliott (1887), 106 N. Y. 288, 7 Crim. Rep. 126, 5 Crim. Rep. 209; People v. O'Neil (1887), 109 N. Y. 251, 6 Crim. Rep. 48; People v. Mayhew (1896), 150 N. Y. 346; People v. Butler (1901), 62 App. Div. 511, 71 N. Y. Supp. 129; People v. Courtney (1883), 28 Hun 591, 1 Crim. Rep. 68; People v. Smith (1883), 28 Hun 627, 1 Crim. Rep. 72; People v. Noelke (1883), 29 Hun 465, 1 Crim. Rep. 263, 94 N. Y. 137; People v. Williams (1883), 29 Hun 523, 1 Crim. Rep. 336; People v. White (1891), 62 Hun 115, 41 St. Rep. 833, 16 N. Y. Supp. 571; People v. Bosworth (1892), 64 Hun 75, 45 St. Rep. 514, 19 N. Y. Supp. 114; People v. Christy (1892), 65 Hun 352, 20 N. Y. Supp. 278; People v. Terwilliger (1893), 74 Hun 314, 56 St. Rep. 257, 26 N. Y. Supp. 674; People v. Christian (1894), 78 Hun 29, 60 St. Rep. 814, 29 N. Y. Supp. 271; People ex rel. Young v. Stout (1894), 81 Hun 339, 30 N. Y. Supp. 898; People ex rel. Dougherty v. Comrs. (1895), 84 Hun 70, 32 N. Y. Supp. 18; People v. Drown (1891), 14 N. Y. Supp. 742; Farrell v. Friedlander (1892), 18 N. Y. Supp. 216, 63 Hun 259; People v. Bliven (1888), 14 St. Rep. 495; People v. Ricker (1889), 22 St. Rep. 652, 4 N. Y. Supp. 70; Farrell v. Friedlander (1892), 43 St. Rep. 448; 18 N. Y. Supp. 215; Crary v. Crary (1892), 46 St. Rep. 308, 18 N. Y. Supp. 753; Butler v. Green *(1892), 47 St. Rep. 926,* 19 N. Y. Supp. 890; D. L. & W. R. R. Co. v. City of

Buffalo (1892), 48 St. Rep. 500, 20 N. Y. Supp. 448; Ballard v. Hitchcock Mfg. Co. (1893), 55 St. Rep. 110, 24 N. Y. Supp. 1101; People v. Willis (1898), 28 Misc. 570, 52 N. Y. Supp. 808, 13 Crim. Rep. 259; Matter of Gardiner (1900), 31 Misc. 372, 64 N. Y. Supp. 760; People v. Thomsen (1885), 3 Crim Rep. 563; People v. Emerson (1888), 6 Crim. Rep. 160, 20 St. Rep. 15; People v. Dunn (1889), 7 Crim. Rep. 179; People v. Patrick (1905), 182 N. Y. 131, 142, 157; People v. O'Farrell (1903), 175 N Y. 325; People v. Weiss (1908), 129 App. Div. 671; People v. Holden (1908), 127 App. Div. 758; People v. Eaton (1902), 122 App. Div. 710, 107 N. Y. Supp. 849; People v. Hummel (1907), 119 App. Div. 154; People v. Gilhooley (1905), 108 App. Div. 234, 235, 95 N. Y. Supp. 636; People v. Moore (1904), 96 App. Div. 56, 89 N. Y. Supp. 83; People v. Ammon (1904), 92 App. Div. 205, 87 N. Y. Supp. 358; People v. Finucan (1903), 80 App. Div. 407, 80 N. Y. Supp. 929; People v. Weisenberger (1902), 73 App. Div. 428, 429, 77 N. Y. Supp. 71; People v. Bissert (1902), 71 App. Div. 118, 125, 75 N. Y. Supp. 630; People v. Deschessere (1902), 69 App. Div. 217, 74 N. Y. Supp. 761; People v. Hummel (1906), 49 Misc. 138, 98 N. Y. Supp. 713; People v. Weiss (1908), 129 App. Div. 671, 673, 676, 114 N. Y. Supp. 236; People v. Barry (1909), 132 App. Div. 231, 238, 116 N. Y. Supp. 870; People v. Yannicola (1909), 133 App. Div. 885, 117 N. Y. Supp. 881.

§ 400. If testimony show higher offense than that charged, court may discharge jury, and hold defendant to answer a new indictment.

If it appear by the testimony, that the facts proved constitute a crime of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed, or continued on or admitted to bail, to answer any new indictment which may be found against him for the higher offense.

New.

People v. Fishman (1909), 64 Misc. 256, 119 N. Y. Supp. 89.

§ 401. If new indictment not found, defendant to be tried on the original indictment.

If an indictment for the higher crime be dismissed by the grand jury, or be not found at or before the next term, the court must again proceed to try the defendant on the original indictment.

New.

§ 402. Court may discharge jury, where it has not jurisdiction of the offense, or the facts do not constitute an offense.

The court may also direct the jury to be discharged, where it appears that it has not jurisdiction of the crime, or that the facts, as charged in the indictment, do not constitute a crime.

New.

§ 403. Proceedings, if jury discharged for want of jurisdiction of the offense, when committed out of the state.

If the jury be discharged, because the court has not jurisdiction of the crime charged in the indictment, and it appear that it was committed out of the jurisdiction of this state, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the district attorney to the chief executive officer of the state, territory or district where the crime was committed.

New.

§ 404. Proceedings in such case, when offense committed in the state.

If the crime were committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the crime be a misdemeanor only, it may admit him to bail, in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, appear in such court to await a warrant from the proper county for his arrest.

New.

§ 405. Same.

In the case provided for in the last section, the clerk must forthwith give notice to the district attorney of the proper county, that the defendant has been so committed or held to bail.

New.

§ 406. Same.

If the defendant be not arrested, as provided in section 404, on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be; and the sureties in the undertaking mentioned in that section must be discharged.

New.

§ 407. Same.

If the defendant be arrested, the same proceedings must be had thereupon, as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

New.

§ 408. Proceedings, if jury discharged because the facts do not constitute an offense.

If the jury be discharged, because the facts as charged do not constitute a crime, the court must order the defendant, if in custody, to be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new indictment can be framed, upon which the defendant can be legally convicted; in which case, it may direct that the case be resubmitted to the same or another grand jury.

New.

§ 409. Same.

If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections 318 and 319.

New.

§ 410. When evidence on either side is closed, court may advise acquittal; effect of the advice.

If, at any time after the evidence on either side is closed, the court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant and they must follow the advice. (Amended by L. 1882, ch. 360.)

New.

People v. Schooley (1896), 149 N. Y. 99; People v. Ledivon (1897), 153 N. Y. 10; People v. Cronk (1899), 40 App. Div. 207, 58 N. Y. Supp. 13; People v. Fanshawe (1892), 65 Hun 79, 47 St. Rep. 332, 19 N. Y. Supp. 865; People v. Trimble (1892), 42 St. Rep. 717; People v. Wiman (1895), 66 St. Rep. 454, 32 N. Y. Supp. 1037; People v. Brickner (1891), 15 N. Y. Supp. 531; People v. Klock (1907), 55 Misc. 46, 106 N. Y. Supp. 267.

§ 411. View of premises, when ordered, and how conducted.

When, in the opinion of the court, it is proper that the jury should view the place in which the crime is charged to have been committed, or in which any material fact occurred, it may order the jury to be conducted, in a body, under charge of proper officers, to the place, which must be shown to them by a judge of the court, or by a person appointed by the court for that purpose.

New.

People v. Thorn (1898), 156 N. Y. 296; People v. Palmer (1887), 43 Hun 403, 406; People v. Thomsen (1885), 3 Crim. Rep. 563; People ex rel. Munsell v.

Oyer, etc. (1886), 4 Crim. Rep. 76; People ex rel. Brown v. Supervisors (1886), 4 Crim. Rep. 106; People v. Johnston (1888), 7 Crim. Rep. 404; Buffalo Structural Co. v. Dickinson (1904), 98 App. Div. 355, 360, 90 N. Y. Supp. 1090.

§ 412. Duty of officer as to jury.

The officers, mentioned in the last section, must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

New.

People v. Johnson (1888), 110 N. Y. 134, 7 Crim. Rep. 404, 46 Hun 667, 16 St. Rep. 846; People v. Palmer (1887), 43 Hun 401, 408, 5 Crim. Rep. 111.

§ 413. Knowledge of juror, to be declared in court, and juror to be sworn as witness.

If a juror have any personal knowledge, respecting a fact in controversy in a cause, he must declare it in open court, during the trial. If, during the retirement of the jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

New.

§ 414. Jurors may be permitted to separate during the trial; if kept together, oath of the officers.

The jurors sworn to try an indictment may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or be kept in charge of proper officers. Such officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

New.

People v. Johnston (1888), 7 Crim. Rep. 404.

§ 415. Jurors not to converse together on the subject of the trial, nor form an opinion until the cause is submitted.

The jury must also, at each adjournment of the court, whether

permitted to separate or kept in charge of officers, be admonished by the court, that it is their duty not to converse among themselves on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them.

New.

People v. Draper (1882), 28 Hun 8, 1 Crim. 138; People v. Reavey (1886), 38 Hun 424, 4 Crim. Rep. 2; People v. Rugg (1885), 3 Crim. Rep. 183; People ex rel. Oyer and Terminer (1885), 3 Crim. Rep. 211, 36 Hun 279, 101 N. Y. 245.

§ 416. Proceedings, where juror becomes unable to perform his duty before conclusion of trial.

If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged, and another jury to be then or afterward impaneled.

New.

People v. Smith (1902), 172 N. Y. 210, 227.

§ 417. Court to decide questions of law arising during trial.

The court must decide all questions of law which arise in the course of the trial.

New.

People v. Rego (1885), 3 Crim. Rep. 277, 36 Hun 131; People v. Smith (1902), 172 N. Y. 210, 227.

§ 418. On indictment for libel, jury to determine law and fact.

On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

New.

§ 419. In all other cases, court to decide questions of law, subject to right of defendant to except.

On the trial of an indictment for any other crime than libel, questions of law are to be decided by the court, saving the right of the defendant to except; questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

New.

People v. Upton (1885), 38 Hun 109, 4 Crim. Rep. 468; People v. Dishler (1885), 38 Hun 179, 4 Crim. Rep. 198.

§ 420. Charge to jury.

In charging the jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict; and must, if requested, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

New.

People v. Drayton (1901), 168 N. Y. 13; People v. Hill (1899), 37 App. Div. 329, 56 N. Y. Supp. 282, 13 Crim. Rep. 552; People v. Upton (1885), 38 Hun 109; People v. Dishler (1885), 38 Hun 179; People v. Davis (1892), 46 St. Rep. 214, 19 N. Y. Supp. 781; People v. O'Neil (1888), 6 Crim. Rep. 288.

§ 421. Jury may decide in court, or retire in the custody of officers; oath of the officers.

After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn, to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

New.

In re Choate (1890), 18 Civ. Proc. 184, 9 N. Y. Supp. 321; People v. Beckwith (1889), 7 Crim. Rep. 160; People ex rel. Choate v. Barrett (1890), 30 St. Rep. 729, 8 Crim. Rep. 5, 9 N. Y. Supp. 321, 56 Hun 351, 24 Abb. N. C. 482.

§ 422. When defendant on bail appears for trial, he may be committed.

When a defendant, who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

New.

CHAPTER II.

CONDUCT OF THE JURY, AFTER THE CAUSE IS SUBMITTED TO THEM.

SECTION 423. Room and accommodations for the jury after retirement, how provided.
424. Accommodations for the jury, when kept together during the trial, or after retirement.
425. What papers the jury may take with them.
426. Same.
427. May return into court for information.
428. When jury to be discharged before agreement.
429. Reason for discharge.
430. When jury discharged or prevented from giving a verdict, cause to be again tried.
431. Court may adjourn during absence of jury, as to other business, but deemed open till verdict rendered or jury discharged.
432. Final adjournment of court discharges jury.

§ 423. Room and accommodations for the jury after retirement, how provided.

A room must be provided by the supervisors of the county (or if the trial be in a city court, by the corporate authorities of the city), for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the supervisors or corporate authorities neglect this duty, the court may order the sheriff to perform it; and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

New.

§ 424. Accommodations for the jury, when kept together during the trial, or after retirement.

While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court, at the expense of the county (or if the trial be in the city court, at the expense of the city), with suitable and sufficient food and lodging.

New.

§ 425. What papers the jury may take with them.

The court may permit the jury, upon retiring for deliberation, to take with them any paper or article which has been received as evidence in the cause, but only upon the consent of the defendant and the counsel for the people.

New.

People v. Dolan (1906), 186 N. Y. 15; People v. Gallagher (1902), 75 App. Div. 39, 43, 78 N. Y. Supp. 5.

§ 426. Same.

The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

New.

§ 427. May return into court, for information.

After the jury have retired for deliberation, if there be a disagreement between them, as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given after notice to the district attorney and to the counsel for the defendant, and in cases of felony, in the presence of the defendant.

New.

People v. Cassiano (1888), 30 Hun 389, 1 Crim. Rep. 507; People v. Kennedy (1890), 57 Hun 584, 33 St. Rep. 109, 11 N. Y. Supp. 244; People v. Parker (1893), 49 St. Rep. 885.

§ 428. When jury to be discharged before agreement.

After the jury have retired to consider of their verdict, they can be discharged before they shall have agreed thereon only in the following cases:

1. Upon the occurrence of some injury or casualty affecting the defendant, the jury or some one of them, or the court, rendering it inexpedient to keep them longer together; or

2. When after the lapse of such time as shall seem reasonable to the court, they shall declare themselves unable to agree upon a verdict; or

3. When with the leave of the court, the public prosecutor and the counsel for the defendant consent to such discharge.

New.

People v. Fishman (1909), 64 Misc. 256, 119 N. Y. Supp. 89.

§ 429. Reason for discharge.

Whenever the jury is discharged without a verdict, the reason for the discharge must be entered on the minutes.

New.

§ 430. When jury discharged or prevented from giving a verdict, cause to be again tried.

In all cases where a jury are discharged, or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment, during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

New.

People v. Fishman (1909), 64 Misc. 256, 119 N. Y. Supp. 89.

§ 431. Court may adjourn during absence of jury, as to other business, but deemed open till verdict rendered or jury discharged.

While the jury are absent, the court may adjourn from time to time, as to other business; but it is nevertheless deemed open, for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged.

New.

§ 432. Final adjournment of court discharges jury.

A final adjournment of the court discharges the jury, but any term of a court may be continued for the purpose of finishing a trial or receiving a verdict.

New.

People ex rel. Weick v. Warden (1907), 117 App. Div. 157, 102 N. Y. Supp. 374.

CHAPTER III.

THE VERDICT.

SECTION 433. When the jury have agreed, to be brought into court and their names called. If all do not appear, jury to be discharged and cause again tried.
434. In felony, defendant must be present. In misdemeanor, verdict may be rendered in his absence.
435. Manner of taking the verdict.
436. Verdict may be general or special.
437. General verdict.
438. Special verdict.
439. Special verdict, how rendered.
440. Same.
441. Special verdict, how brought to argument.
442. Judgment thereon.
443. When special verdict defective, new trial to be ordered.
444. Upon indictment for crime consisting of different degrees, jury may convict of any degree, or of any attempt to commit the crime.
445. In other cases, jury may convict of any offense necessarily included in that charge.
446. On indictment against several, jury may render a verdict as to some, and the cause be again tried as to the others.
447. In what cases court may direct a reconsideration of the verdict.
448. Same.
449. When judgment may be given upon an informal verdict.
450. Polling the jury.
451. Recording the verdict.
452. Defendant, when to be discharged or detained after acquittal.
453. Proceedings upon general verdict of conviction, or a special verdict.
454. When defendant acquitted on the ground of insanity, the fact to be stated with the verdict; commitment of defendant to state lunatic asylum.

§ 433. When the jury have agreed, to be brought into court and their names called; if all do not appear, jury to be discharged and cause again tried.

When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that event, the cause *may be again tried*, at the same or another term.

New.

§ 434. In felony, defendant must be present; in misdemeanor, verdict may be rendered in his absence.

If the indictment be for a felony, the defendant must, before the verdict is received, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

New.

§ 435. Manner of taking the verdict.

If the jury appear, they must be asked by the court or the clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they must, on being required, declare the same.

New.

§ 436. Verdict may be general or special.

The jury may either render a general verdict, or when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

Derivation: 3 R. S. 421, § 68.

People v. Rugg (1885), 98 N. Y. 537, 3 Crim. Rep. 182; People v. Trainor (1901), 57 App. Div. 424, 68 N. Y. Supp. 263, 15 Crim. Rep. 335; People v. Taylor (1885), 3 Crim. Rep. 302.

§ 437. General verdict.

A general verdict upon a plea of not guilty is either "guilty" or "not guilty;" which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant."

New.

People v. Rugg (1885), 98 N. Y. 537; People v. Trimble (1892), 131 N. Y. 118, 60 Hun 365; People v. Trainor (1901), 57 App. Div. 424, 68 N. Y. Supp. 263; People v. Burch (1887), 5 Crim. Rep. 32; People v. Emerson (1889), 7 Crim. Rep. 101.

§ 438. Special verdict.

A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and these conclusions of fact must be so presented, as that nothing remains to the court, but to draw from them conclusions of law.

New.

People v. Hale (1883), 1 Crim. Rep. 535.

§ 439. Special verdict, how rendered.

The special verdict must be reduced to writing, by the jury or in their presence, entered upon the minutes of the court, read to the jury, and agreed to by them, before they are discharged.

New.

People v. Taylor (1885), 3 Crim. Rep. 302.

§ 440. Same.

The special verdict need not be in any particular form, but is sufficient, if it present intelligibly the facts found by the jury.

New.

People v. Hale (1888), 1 Crim. Rep. 585.

§ 441. Special verdict, how brought to argument.

The special verdict may be brought to argument by either party, upon five days' notice to the other, at the same or another term of the court; and upon the hearing thereof, the counsel for the defendant may conclude the argument.

New.

§ 442. Judgment thereon.

The court must give judgment upon the special verdict, as follows:

1. If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted, under that indictment, as provided in sections 444 and 445, judgment must be given accordingly; but if otherwise, judgment of acquittal must be given;

2. If the plea be a former conviction or acquittal of the same offense, the court must give judgment of conviction or acquittal, according as the facts prove or fail to prove the former conviction or acquittal.

New.

People v. Connor (1892), 65 Hun 399, 20 N. Y. Supp. 209, 8 Crim. Rep. 447; People v. Burch (1887), 5 Crim. Rep. 32.

§ 443. When special verdict defective, new trial to be ordered.

If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give *judgment, or* if they find the evidence of facts merely, and not

the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

New.

People v. Walker (1908), 40 Misc. 521, 83 N. Y. Supp. 207.

§ 444. Upon indictment for offense consisting of different degrees, jury may convict of any degree, or of any attempt to commit the crime.

Upon an indictment for a crime consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the crime. Upon a trial for murder or manslaughter, if the act complained of is not proven to be the cause of death, the defendant may be convicted of assault in any degree constituted by said act, and warranted by the evidence. A conviction upon a charge of assault is not a bar to a subsequent prosecution for manslaughter or murder, if the person assaulted dies after the conviction, in case death results from the injury caused by the assault. (Amended by L. 1900, ch. 625.)

Derivation: 4 R. S. 702, § 27.

People v. Willson (1888), 109 N. Y. 345; People v. McDonald (1899), 159 N. Y. 314, 14 Crim. Rep. 104, 17 St. Rep. 494; People v. Kane (1900), 161 N. Y. 389, 14 Crim. Rep. 303, 312; People v. Austin (1901), 63 App. Div. 384, 71 N. Y. Supp. 601, 170 N. Y. 585; People v. McTameney (1883), 30 Hun 506, 1 Crim. Rep. 437; People v. Palmer (1887), 43 Hun 404, 5 Crim. Rep. 105; People ex rel. Young v. Stout (1894), 81 Hun 339, 30 N. Y. Supp. 898, 63 St. Rep. 154; Bixby v. Casino Co. (1895), 70 St. Rep. 472, 35 N. Y. Supp. 677; People v. Connors (1895), 35 N. Y. Supp. 472; People v. Cooper (1884), 3 Crim. Rep. 119; People v. McCallam (1885), 3 Crim. Rep. 199; People v. Taylor (1885), 3 Crim. Rep. 302; People v. Meegan (1887), 5 Crim. Rep. 523; People v. Emerson (1889), 7 Crim. Rep. 101; Schlessinger v. Kelly (1907), 99 N. Y. Supp. 1082; People v. Huson (1907), 187 N. Y. 98, 114 App. Div. 695, 99 N. Y. Supp. 1081; People v. Monroe (1907), 119 App. Div. 706; Petty v. Emery (1904), 96 App. Div. 35, 88 N. Y. Supp. 823; People v. Schiavi (1904), 96 App. Div. 483, 89 N. Y. Supp. 564; People v. Wheeler (1903), 79 App. Div. 396, 79 N. Y. Supp. 454; People v. De Garmo (1902), 73 App. Div. 46, 54, 76 N. Y. Supp. 477; People v. Adams (1902), 73 App. Div. 166, 167, 76 N. Y. Supp. 361; People v. Cox (1901), 67 App. Div. 344, 345, 73 N. Y. Supp. 774.

§ 445. In other cases, jury may convict of any offense necessarily included in that charge.

In all other cases, the defendant may be found guilty of any crime, the commission of which is necessarily included in that with which he is charged in the indictment.

New.

People v. McTameney (1883), 30 Hun 506, 1 Crim. Rep. 441; People v. Palmer

(1887), 48 Hun 406, 5 Crim. Rep. 105; People v. Kennedy (1890), 57 Hun 535, 11 N. Y. Supp. 245; People ex rel. Young v. Stout (1894), 81 Hun 339, 63 St. Rep. 154, 30 N. Y. Supp. 898; People v. McDonald (1888), 17 St. Rep. 494, 1 N. Y. Supp. 703; Bailey v. Kincaid (1890), 33 St. Rep. 110, 11 N. Y. Supp. 294; People v. Hill (1893), 57 St. Rep. 293, 26 N. Y. Supp. 331; People v. Connors (1895), 70 St. Rep. 172, 35 N. Y. Supp. 472; People v. Dowling (1883), 1 Crim. Rep. 532; People v. Adams (1902), 72 App. Div. 166, 167, 76 N. Y. Supp. 361.

§ 446. On indictment against several, jury may render a verdict as to some, and the cause be again tried as to the others.

On an indictment against one or more, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly; and the case, as to the rest, may be tried by another jury.

New.

§ 447. In what cases court may direct a reconsideration of the verdict.

When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

New.

§ 448. Same.

If the jury render a verdict which is neither a general or a special verdict, as defined in sections 437 and 438, the court may, with proper instructions as to the law, direct them to reconsider it; and it cannot be recorded, until it be rendered in some form, from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and leave the judgment to the court.

New.

§ 449. When judgment may be given upon an informal verdict.

If the jury persist in finding an informal verdict, from which, however, it can be clearly understood, that their intention is to find *in favor of the defendant*, upon the issue, it must be entered in the

terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given, unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

New.

People v. Burch (1887), 5 Crim. Rep. 32; People v. Cox (1901), 67 App. Div. 344, 349, 73 N. Y. Supp. 774.

§ 450. Polling the jury.

When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party; in which case they must be severally asked whether it is their verdict; and if any one answer in the negative, the jury must be sent out for further deliberation.

New.

§ 451. Recording the verdict.

When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

New.

§ 452. Defendant, when to be discharged or detained after acquittal.

If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given; except that when the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention, to the end that a new indictment may be preferred, in the same manner and with the like effect as provided in sections 408 and 409.

New.

§ 453. Proceedings upon general verdict of conviction or a special verdict.

If a general verdict be rendered against the defendant, or a

special verdict be given, he must be remanded, if in custody, or if on bail, he may be committed to the proper officer of the county, to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money be deposited instead of bail, it must be refunded to the defendant.

New.

People v. Trimble (1891), 60 Hun 365, 15 N. Y. Supp. 60, 131 N. Y. 118.

§ 454. When defendant acquitted on the ground of insanity, the fact to be stated with the verdict; commitment of defendant to state asylum.

When the defense is insanity of the defendant the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court must, thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the state lunatic asylum, until he becomes sane.

New.

People v. Rice (1899), 159 N. Y. 407, 14 Crim. Rep. 110; People v. Trimble (1891), 15 N. Y. Supp. 60; People ex rel. Peabody v. Baker (1908), 59 Misc. 359, 110 N. Y. Supp. 848; People ex rel. Peabody v. Chanler (1909), 133 App. Div. 159, 117 N. Y. Supp. 322.

TITLE VIII.

OF THE PROCEEDINGS AFTER TRIAL AND BEFORE JUDGMENT.

CHAPTER I. Bill of exceptions.
II. New trials.
III. Arrest of judgment.

CHAPTER I.

BILL OF EXCEPTIONS.

SECTION 455. In what cases.
456. Minutes of proceedings, how paid.
457. To be settled at the trial, or the point noted in writing.
458. Case when necessary, how made and settled.
459. When and how settled, after the trial.
460. Enlarging the time therefor.
461. Effect of not serving exceptions or amendments, within the time prescribed.

§ 455. In what cases.

On the trial of an indictment, exceptions may be taken by the defendant, to a decision of the court, upon a matter of law, by which his substantial rights are prejudiced and not otherwise, in any of the following cases:

1. In disallowing a challenge to the panel of the jury;

2. In admitting or rejecting testimony on the trial of a challenge for actual bias to any juror who participated in the verdict, or in allowing or disallowing such challenge;

3. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

Derivation: 4 R. S. 736, § 21.

People v. Palmer (1888), 109, N. Y. 419, 5 Crim. Rep. 405; People v. Mc Quade (1888), 110 N. Y. 284, 6 Crim. Rep. 33, 21 Abb. N. C. 418, 439; People v. McGonegal (1892), 136 N. Y. 62; People v. Flaherty (1898), 27 App. Div. 538, 50 N. Y. Supp. 574, rev'd 162 N. Y. 532; People v. McLaughlin (1896), 78 St. Rep. 502; 37 N. Y. Supp. 1005; People v. Petrea (1882), 1 Crim. Rep. 204, 30 Hun 102; People v. Welch (1883), 1 Crim. Rep. 488; People v. Petmecky (1884), 2 Crim. Rep. 458; People v. Wiechers (1904), 179 N. Y. 464.

§ **456. Minutes of proceedings; how paid.**

Where the defendant is convicted of a crime punishable by death, the stenographer, within ten days after the judgment has been pronounced, shall furnish to the attorney for the defendant, at his request, a copy of the stenographic minutes of the entire proceedings upon the trial. Where the defendant is convicted of a crime not punishable by death the clerk of the court in which the conviction was had shall within two days after a notice of appeal shall be served upon him notify the stenographer that an appeal has been taken whereupon the stenographer shall within ten days after receiving such notice deliver to the clerk of the court a copy of the stenographic minutes of the entire proceedings of the trial certified by the stenographer as an accurate transcript of such proceeding. Such copy shall be filed by the clerk in his office and shall constitute the minutes of the court of the trial and be included in the judgment roll as provided by section four hundred and eighty-five of this act. The expense of such copy shall be a county charge, payable to the stenographer out of the court fund upon the certificate of the judge presiding at the trial. (Amended by L. 1897, ch. 427; L. 1911, ch. 667, in effect Sept. 1, 1911.)

Derivation: 4 R. S. 736, § 21.

People v. McQuade (1888), 110 N. Y. 284; People v. Priori (1900), 163 N. Y. 103; People v. Bradner (1887), 44 Hun, 235.

§ **457. To be settled at the trial or the point noted in writing.**

The bill of exceptions must be settled at the trial unless the court otherwise direct. If no such direction be given, the point of the exception must be particularly stated in writing, and delivered to the court, and must immediately be corrected or added to, until it is made conformable to the truth.

Derivation: L. 1872, ch. 56.

People v. **Priori (1900), 163 N. Y. 103.**

§ 458. Case when necessary, how made and settled.

When a party intends to appeal from a judgment rendered after the trial of an issue of fact he must, except as otherwise prescribed by law or by this section, make a case and procure the same to be settled and signed, by the judge or justice, by or before whom the action was tried, as prescribed in the general rules of practice; or, in case of the death or disability of such judge or justice, in such manner as the appellate court directs. The case must contain so much of the evidence, and other proceedings upon the trial, as is material to the questions to be raised thereby, and also the exceptions taken by the party making the case; and in a case where a special question is submitted to the jury, such exceptions taken by any party to the action as shall be necessary to determine whether there should be a new trial, if the judgment be reversed. If it afterwards becomes necessary to separate the exceptions, the separation may be made and the exceptions may be stated with so much of the evidence, and other proceedings, as is material to the questions raised by them, in a case prepared and settled as directed by the general rules of practice, or in the absence of directions therein, by the court, upon motion. When the defendant intends to appeal from a judgment entered after a trial of an issue of fact where he is convicted of a crime not punishable by death it shall not be necessary to make a case or bill of exceptions as prescribed in this section, but the appeal shall be heard upon the judgment roll including the copy of the minutes of the trial filed as prescribed by section four hundred and fifty-six of the Code of Criminal Procedure. Within thirty days after the service of a notice of appeal the appellant shall procure to be printed as required by the general rules of practice the record upon which the appeal is to be heard and cause the same to be filed with the clerk of the Appellate Division of the Supreme court in which the appeal is to be heard duly certified by the clerk of the court in which the conviction was had. If the printed copy of the record so certified is not filed within the time hereinbefore specified the district attorney may move to dismiss the appeal upon four days' notice to the adverse party and such appeal shall be dis-

missed unless the appellate division of the supreme court shall for good cause shown by order extend the time for filing the printed papers so certified as aforesaid. (Am'd by L. 1897, ch. 427; L. 1911, ch. 667, in effect Sept. 1, 1911.)

New.

People v. Priori (1900), 163 N. Y. 103; People v. Barone (1900), 161 N. Y. 476, 14 Crim. Rep. 379; People ex rel. Hummel v. Trial Term (1906), 184 N. Y. 30, 35; People v. Flanigan (1903), 174 N. Y. 366.

§ 459. When and how settled, after trial.

At the time appointed, the judge must settle and sign the bill of exceptions.

New.

People v. Priori (1900), 163 N. Y. 103; People v. Bradner (1887), 44 Hun, 235; People v. Flanigan (1903), 174 N. Y. 366.

§ 460. Enlarging the time therefor.

The time for preparing the case, or the amendments thereto, or for settling the same, may be enlarged by consent of the parties, or by the presiding judge, or by a justice of the supreme court, but no other officer. Only one order extending the time shall be granted, except upon notice of at least two days to the adverse party. (Amended by L. 1897, ch. 427.)

New.

People v. Priori (1900), 163 N. Y. 103.

§ 461. Effect of not serving exceptions or amendments, within the time prescribed.

If the bill of exceptions be not served within the time prescribed in section 458, or within the enlarged time therefor, as prescribed in the last section, the exceptions are deemed abandoned. If it be served, and the parties omit, within the time limited by section 458, the one to prepare amendments, and the other to give notice

of appearance before the judge, they are respectively deemed, the one to have agreed to the bill of exceptions, and the other to the amendments.

Now.

CHAPTER II.

NEW TRIALS

SECTION 462. New trial.
463. When granted.
464. Effect of granting new trial.
465. In what cases granted.
466. Application, when to be made.

§ 462. New trial.

A new trial is a re-examination of the issue, in the same court, before another jury, after a verdict has been given.

New.

People v. Beckwith (1886), 42 Hun 367, 5 Crim. Rep. 233; People v. Palmer (1887), 43 Hun 409, 5 Crim. Rep. 109; People v. Koerner (1907), 117 App. Div. 44, 102 N. Y. Supp. 289; People ex rel. Jerome v. Court of General Sessions (1906), 112 App. Div. 427, 98 N. Y. Supp. 557; People v. Molineaux (1901), 36 Misc. 435, 437, 73 N. Y. Supp. 806.

§ 463. When granted.

A new trial can be granted by the court in which the former trial was had, only in the cases provided in section 465.

New.

People v. Bradner (1887), 107 N. Y. 1, 44 Hun 283; People v. Draper (1882), 28 Hun 3, 1 Crim. Rep. 142; People v. Beckwith (1886), 42 Hun 367, 5 Crim. Rep. 233; People v. Taylor (1887), 43 Hun 419; People v. Trezza (1891), 40 St. Rep. 482; People v. Flack (1890), 8 Crim. Rep. 33, 9 N. Y. Supp. 279, 24 Abb N. C. 445; People ex rel. Jerome v. General Sessions (1906), 185 N. Y. 506; People v. Jones (1906), 115 N. Y. Supp. 800; People v. Gallagher (1902), 75 App. Div. 39, 78 N. Y. Supp. 5; People v. Thayer (1908), 61 Misc. 573; People v. O'Connor (1902), 37 Misc. 754, 755, 76 N. Y. Supp. 511.

§ 464. Effect of granting new trial.

The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew; and the former verdict cannot be used or referred to, either in evidence or in argument.

New.

People v. Palmer (1888), 109 N. Y. 413, 5 Crim. Rep. 109, 43 Hun 409; Lawrence v. Whitney (1889), 115 N. Y. 420; People v. Upton (1885), 38 Hun 110; People v. Beckwith (1886), 42 Hun, 367; People v. Cignarale (1888), 6 Crim. Rep. 98; People v. Greenwall (1889), 7 Crim. Rep. 313; People v. Flack (1890), 8 *Crim. Rep. 33, 9* N. Y. Supp. 279; People v. Wheeler (1903), 79 App. Div. 398, *79 N. Y. Supp. 454.*

§ 465. In what cases granted.

The court in which a trial has been had upon an issue of fact has power to grant new trial, when a verdict has been rendered against the defendant, by which his substantial rights have been prejudiced, upon his application, in the following cases:

1. When the trial has been had in his absence, if the indictment be for a felony;

2. When the jury has received any evidence out of court, other than that resulting from a view, as provided in section 411;

3. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When the court has misdirected the jury in the matter of law, or has refused to instruct them as prescribed in section 420; and the defendant has, at the trial, excepted to such misdirection or refusal;

6. When the verdict is contrary to law or clearly against evidence;

7. When it is made to appear, by affidavit, that upon another trial, the defendant can produce evidence such as, if before received would probably have changed the verdict; if such evidence has been discovered since the trial, is not cumulative; and the failure to produce it on the trial was not owing to want of diligence. The court in such cases can, however, compel the personal appearance of the affiants before it for the purposes of their personal examination and cross-examination, under oath, upon the contents of the affidavits which they subscribed. (Subd. amended by L. 1894, ch. 270.)

New.

People v. Johnson (1888), 110 N. Y. 134, aff'g 46 Hun 667; People v. Buchanan (1895), 145 N. Y. 1, 64 St. Rep. 444, 25 N. Y. Supp. 481; People v. Hock (1896), 150 N. Y. 291; People v. Mayhew (1897), 151 N. Y. 607; People v. Priori (1900), 163 N. Y. 101; People v. Smith (1896), 6 App. Div. 235, 39 N. Y. Supp. 1009; Talbert v. Storum (1896), 7 App. Div. 458, 39 N. Y. Supp. 1047; Lester v. Mayor (1898), 33 App. Div. 350, 53 N. Y. Supp. 934; Sawyer v. People (1882), 27 Hun 287; People v. Draper (1882), 28 Hun 4, 1 Crim. Rep. 143; People v. Mangano (1883), 29 Hun 263; People v. Hovey (1883), 30 Hun 358, 1 Crim. Rep. 332; People v. Lane (1883), 31 Hun 14; People v. Kelly, (1883), 31 Hun 228, 2 Crim. Rep. 18, 94 N. Y. 526; People v. Beckwith (1886), 42 Hun 367; People v. Palmer (1887), 43 Hun 409, 5 Crim. Rep. 106, 109; People v. Schad (1891) 58 Hun 578,

12 N. Y. Supp. 695; People v. Trezza (1891), 40 St. Rep. 482; People v. Colegrove (1892), 45 St. Rep. 101, 18 N. Y. Supp. 370; People ex rel. Benton v. Ct. of Sessions (1892), 46 St. Rep. 256, 19 N. Y. Supp. 509; Hanrahan v. Ayres (1894), 64 St. Rep. 14, 10 Misc. 439, 31 N. Y. Supp. 458; People v. Lytle (1896), 74 St. Rep. 727, 40 N. Y. Supp. 158; People v. Mayhew (1897), 78 St. Rep. 206, 44 N. Y. Supp. 206; People v. Shea (1896) 38 N. Y. Supp. 821; People v. Flack (1890), 8 Crim. Rep. 33, 9 N. Y. Supp. 279; People v. Moore (1899), 29 Misc. 575, 62 N. Y. Supp. 252, aff'd 58 App. Div. 637, 66 N. Y. Supp. 1139; People v. Benham (1900), 30 Misc. 468, 63 N. Y. Supp. 923, 160 N. Y. 407; People v. Shields (1901), 34 Misc. 257, 69 N. Y. Supp. 620, 5 Crim. Rep. 388; People ex rel. Jerome v. General Sessions (1906), 185 N. Y. 506, 112 App. Div. 428, 98 N. Y. Supp. 557; People v. Patrick (1905), 182 N. Y. 131, 178; Hibbard v. Loeb (1906), 125 App. Div. 580; People v. Myers (1906), 115 App. Div 865, 101 N. Y. Supp. 291; People v. O'Brien (1905), 110 App. Div. 26, 28, 96 N. Y. Supp. 1045; People v. Cameron (1903), 89 App. Div. 14, 85 N. Y. Supp. 63 (subd. 7); People v. Wheeler (1903), 79 App. Div. 398, 79 N. Y. Supp. 454; People v. Gallagher (1902), 75 App. Div. 39, 45, 78 N. Y. Supp. 5; People v. Bishop (1901), 66 App. Div. 415, 421, 73 N. Y. Supp. 226; People v. Thayer (1908), 61 Misc. 573; People ex rel. Jerome v. Goff (1905), 49 Misc. 72, 73, 98 N. Y. Supp. 66; People v. Sullivan (1903), 40 Misc. 308, 81 N. Y. Supp. 969; People v. O'Connor (1902), 37 Misc. 754, 785, 76 N. Y. Supp. 511; People v. Jones (1906), 115 N. Y. Supp. 800; People v. Jackson (1905), 47 Misc. 60, 62, 95 N. Y. Supp. 286; People v. Way (1907), 54 Misc. 488, 106 N. Y. Supp. 52.

§ 466. Application, when to be made.

The application for a new trial must be made before judgment, except an application made under subdivision seven of section four hundred and sixty-five, which may be made at any time within one year, and except in case of a sentence of death, when the application may be made at any time before execution, and in case the court before which the trial was had is not in session, so that the application can be made and determined before the execution, then the application may be made to any justice of the supreme court or special term thereof, within the judicial department where the conviction was had. (Amended by L. 1882, ch. 65.)

New.

People v. Bradner (1887), 107 N. Y. 1; Vail v. Hamilton (1880), 20 Hun 358; People v. Beckwith (1886), 42 Hun 367, 368, 5 Crim. Rep. 233; People v. Palmer (1887), 43 Hun 409, 5 Crim. Rep. 109; People v. Colegrove (1892), 45 St. Rep. 101, 18 N. Y. Supp. 370; People v. Dwyer (1900), 30 Misc. 284, 63 N. Y. Supp. 495; People v. Hovey (1883), 1 Crim. Rep. 332; People v. Leighton (1888), 1 Crim. Rep. 469; People ex rel. Jerome v. General Sessions (1906), 185 N. Y. 506; People v. Patrick (1905), 182 N. Y. 131, 178; People v. Spencer (1904), 179 N. Y. 416; Hibbard v. Loeb (1906), 125 App. Div. 581; People v. Bonifacio (1907), 119 App. Div. 722; People v. Koerner (1907), 117 App. Div. 44, 102 N. Y. Supp. 93; *People* ex rel. Jerome v. Court of General Sessions (1906), 112 App. Div. 428, 98 *N. Y. Supp. 557; People* ex rel. Jerome v. Goff (1905), 49 Misc. 72, 78, 98 N. Y. *Supp. 66; People v. O'Connor* (1902), 37 Misc. 754, 76 N. Y. Supp. 511.

CHAPTER III.

ARREST OF JUDGMENT.

SECTION 467. Motion in arrest of judgment, defined, and upon what defects founded.
468. Court may arrest judgment without motion.
469. Motion, when and how made.
470. Defendant, when to be held or discharged.

§ 467. Motion in arrest of judgment, defined, and upon what defects founded.

A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant upon the plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section 331. (Amended by L. 1882, ch. 360.)

New.

People v. Kelly (1884), 94 N. Y. 526, 2 Crim. Rep. 24, 31 Hun 226; People v. Buddensieck (1886), 103 N. Y. 487; People v. Meakim (1892), 133 N. Y. 214, 44 St. Rep. 749; People v. Tower (1892), 135 N. Y. 457; People v. Knatt (1898), 156 N. Y. 309, 13 Crim. Rep. 97; People v. Mack (1898), 35 App. Div. 117; 54 N. Y. Supp. 698; People v. Petersen (1901), 60 App. Div. 120, 15 Crim. Rep. 423; 69 N. Y. Supp. 941; People v. Austin (1901), 63 App. Div. 388, 71 N. Y. Supp. 601; People v. De Argencour (1884), 32 Hun 179, 95 N. Y. 624; People v. Osterhout (1884), 34 Hun 262; People v. Beckwith (1886), 42 Hun 367; People ex rel. Benton v. Ct. of Sessions (1892), 46 St. Rep. 256, 19 N. Y. Supp. 508; Brusie v. Peck Bros. & Co. (1892), 48 St. Rep. 439; People v. Buchanan (1893), 25 N. Y. Supp. 481; People v. Huson (1907), 187 N. Y. 99; People v. Wiechers, 179 N. Y. 462; People v. Myers (1906), 115 App. Div. 865, 101 N. Y. Supp. 291; People ex rel. Schneider v. Hayes (1905), 108 App. Div. 6, 8, 95 N. Y. Supp. 471; People v. Cox (1901), 67 App. Div. 344, 347, 73 N. Y. Supp. 774; People v. Abeel (1904), 45 Misc. 87, 91 N. Y. Supp. 699.

§ 468. Court may arrest judgment without motion.

The court may, also, on its own view of any of these defects, arrest the judgment without motion.

New.

§ 469. Motion, when and how made.

The motion must be made before or at the time when the de-

fendant is called for judgment. If made before, it must be on notice to the district attorney, or in his presence.

New.

People v. De Argencour (1884), 95 N. Y. 624, 32 Hun. 179; People ex rel. Schneider v. Hayes (1905), 108 App. Div. 6, 895 N. Y. Supp. 471.

§ 470. Defendant, when to be held or discharged.

When judgment is arrested, and it appears that there is not evidence sufficient to convict the defendant of any crime, he must, if in custody, be discharged; or, if under bail, his bail must be exonerated; or, if money has been deposited instead of bail, it must be refunded; and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment was found; but, if there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be re-committed or admitted to bail anew to answer the new indictment; if there is reasonable ground to believe him guilty of another crime, he must be committed or held to answer therefor; and in no case, when re-committed or held to answer, is the former verdict a bar to a new indictment.

New.

People v. Austin (1901,) 63 App. Div. 388; 71 N. Y. Supp. 601; People v. Cox (1901), 67 App. Div. 344, 349, 73 N. Y. Supp. 774.

CHAPTER IV.

SUSPENSION OF JUDGMENT.

§ 470-a. Suspension of judgment.

If the judgment be suspended, after a plea or verdict of guilty or after a verdict against the defendant upon a plea of former conviction or acquittal, the court may pronounce judgment at any time thereafter within the longest period for which the defendant might have been sentenced; but not after the expiration of such period, unless the defendant shall have been convicted of another crime committed during such period. (Added by L. 1893, ch. 651.)

New.

People ex rel. Dunnigan v. Webster (1895), 14 Misc. 620, 36 N. Y. Supp. 745; People ex rel. Seaman v. Dickinson (1896), 71 St. Rep. 678, 36 N. Y. Supp. 748. People v. Markham (1907), 99 N. Y. Supp. 1093; People v. Fabian (1908), 126 App. Div. 95; Matter of Koehler & Co. (1908), 125 App. Div. 886, 111 N. Y. Supp. 151; People v. Markham (1906), 114 App. Div. 389; People ex rel. Sullivan v. Flynn (1907), 55 Misc. 640, 99 N. Y. Supp. 1092.

§ 470-b. Regarded as a conviction.

1. For the purpose of indictment and conviction of a second offense, the plea or verdict and suspension of judgment shall be regarded as a conviction, and shall be pleaded according to the fact.

2. The said plea or verdict and suspension of judgment may be proved in like manner as a conviction for the purpose of affecting the weight of the defendant's testimony in any action or proceeding, civil or criminal. (Added by L. 1893, ch. 651.)

New.

99 N. Y. Supp. 1093; People v. Markham (1906), 114 App. Div. 389, 99 N. Y. Supp. 1092.

TITLE IX.

OF THE JUDGMENT AND EXECUTION.

CHAPTER I. The judgment.
II. The execution.

CHAPTER I.

THE JUDGMENT.

SECTION 471. Time for pronouncing judgment, to be appointed by the court.
472. Same.
473. In felony, defendant must be present. In misdemeanor, judgment may be pronounced in his absence.
474. When defendant is in custody, how brought before the court for judgment.
475. How brought before the court, when he is on bail.
476. Bench warrant to issue.
477. Form of bench warrant.
478. Service of the bench warrant.
479. Same.
480. Arraignment of defendant for judgment.
481. What cause may be shown against the judgment.
482. If no sufficient cause shown, judgment to be pronounced.
482*a*. Evidence of conviction when clerk certifies no record of judgment has been signed or filed.
483. Probation; fine; restitution; transfer from supreme to county court.
484. Judgment to pay fine.
485. The judgment roll.
485*a*. Examination of convict before sentence.

§ 471. Time for pronouncing judgment, to be appointed by the court.

After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not arrested, or a new trial granted, the court must appoint a time for pronouncing judgment.

New.

People v. Trimble (1891), 60 Hun 365, 131 N. Y. 118, 38 St. Rep. 998, 15 N. Y. *Supp. 60; People ex rel.* Forsyth v. Court of Sessions (1893), 66 Hun 552, rev'd

141 N. Y. 288; People v. Trainor (1901), 57 App. Div. 424, 68 N. Y. Supp. 268; People ex rel. Evans v. McEvan (1884), 2 Crim. Rep. 313; People v. Court of Sessions (1892), 8 Crim. Rep. 358, 46 St. Rep. 256, 50 id. 286, 19 N. Y. Supp. 509, 21 id. 659.

§ 472. Time for pronouncing judgment to be appointed by the court.

The time appointed must be at least two days after the verdict, if the court intend to remain in session so long, or if not, as remote a time as can reasonably be allowed; but any delay may be waived by the defendant. (Amended by L. 1882, ch. 360.)

People v. Trimble (1891), 60 Hun 365, 38 St. Rep. 999, 15 N. Y. Supp. 60; People ex rel. Benton v. Court of Sessions (1892), 46 St. Rep. 256; People v. Everhardt (1887), 6 Crim. Rep. 236, 104 N. Y. 591; People v. Spencer (1904), 179 N. Y. 415.

§ 473. In felony, defendant must be present; in misdemeanor, judgment may be pronounced in his absence.

For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence.

Derivation: 4 R. S. 735, § 13.

§ 474. When defendant is in custody, how brought before the court for judgment.

When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment; and the officer must do so accordingly.

New.

§ 475. How brought before the court, when he is on bail.

If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment, when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

New.

§ 476. Bench warrant to issue.

The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

New.

§ 477. Form of bench warrant.

The bench warrant must be substantially in the following form: "County of *Albany,* [or as the case may be.]

[SEAL] "In the name of the people of the State of New York—To any sheriff, constable, marshal, or police man in this state. A. B. having been on the day of , 18 , duly convicted in the county court of the county of Albany [or as the case may be], of the crime of [designating it generally].

"You are therefore commanded, forthwith to arrest the above-named A. B., and bring him before that court for judgment; or if the court have adjourned for the term, you are to deliver him into the custody of the sheriff of the county of *Albany* [or as the case may be, or in the city and county of New York, 'to the keeper of the city prison of the city of New York.']

"City of *Albany,* [or as the case may be] the day of , 18 .

"By the order of the court.

"E. F., *Clerk.*"

New.

§ 478. Service of the bench warrant.

The bench warrant may be served in any county, in the same manner as a warrant of arrest; except that when served in another county it need not be indorsed by a magistrate of that county.

New.

§ 479. Service of the bench warrant.

Whether the bench warrant be served in the county in which it was issued, or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

New.

§ 480. Arraignment of defendant for judgment.

When the defendant appears for judgment, he must be asked by the clerk whether he have any legal cause to show why judgment should not be pronounced against him.

New.

People v. Druse (1886), 5 Crim. Rep. 23; People v. Canepi (1905), 181 N. Y. 398, 402.

***§ 481.* What cause may be shown against the judgment.**

He may show for cause, against the judgment,

1. That he is insane; and if, in the opinion of the court, there be reasonable ground for believing him to be insane, the question of his insanity must be tried as provided by this Code. If, upon the trial of that question, it is found that he is sane, judgment must be pronounced; but if found insane, he must be committed to the state lunatic asylum until he becomes sane; and when notice is given of that fact, he must be brought before the court for judgment.

2. That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

New.

People v. Osterhout (1884), 34 Hun 262, 8 Crim. Rep. 446; People v. McElvaine (1891), 36 St. Rep. 181; People v. Court of Sessions (1892), 8 Crim. Rep. 358, 19 N. Y. Supp. 509, 46 St. Rep. 181.

§ 482. If no sufficient cause shown, judgment to be pronounced.

If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it must thereupon be rendered.

New.

People ex rel. Benton v. Court of Sessions (1893), 66 Hun 553, rev'd 141 N. Y. 288, 19 N. Y. Supp. 509, 21 N. Y. Supp. 659.

§ 482-a. Evidence of conviction when clerk certifies no record of judgment has been signed or filed.

A copy of the minute of any conviction, with the sentence of the court thereon, entered by the clerk of any court, duly certified by the clerk in whose custody such minutes shall be, under his official seal, together with a copy of the indictment on which such conviction shall have been had, certified in the same manner, shall be evidence in all courts and places of such conviction, in all cases in which it shall appear by the certificate of the clerk, or otherwise, that no record of the judgment on such conviction, has been signed and filed. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 739, § 10.

§ 483. Probation, fine, restitution, transfer from supreme to county court.

After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, and where there appear to be circumstances in mitigation of the pun-

ishment, the court shall have power, in its discretion, to place the defendant on probation in the manner following:

1. The court upon suspending sentence, may place such person on probation during such suspension under the charge and supervision of a probation officer. When practicable, any minor child, placed on probation, shall be placed with a probation officer of the same religious faith as that of the child's parents. The parents, guardian or master of such child, if the child has any, shall be summoned by the magistrate to attend any examination or trial of such child and to be present in court when the child is placed on probation and informed by the court of the action taken in such case.

2. If the judgment is to pay a fine and that the defendant be imprisoned until it is paid, the court upon imposing sentence may direct that the execution of the sentence of imprisonment be suspended for such period of time, and on such terms and conditions as it shall determine, and shall place such defendant on probation under the charge and supervision of a probation officer during such suspension, provided, however, that upon payment of the fine being made, the judgment shall be satisfied and the probation cease. The court may, upon consent of the defendant and as one of the conditions of suspension of sentence, or of probation, require him while under suspended sentence or on probation to make restitution or reparation to the aggrieved parties in an amount to be fixed by the court, not to exceed the actual losses or damages caused by his offense; or the court may require the defendant while under suspension of sentence or on probation to support his children.

3. Whenever a defendant is placed on probation in the supreme court, the court or the justice thereof presiding at the time the defendant is placed on probation, or if the supreme court is not sitting and if such justice is not in the county, any other justice of the supreme court in that district, may, upon the consent of the defendant, enter an order transferring the probationer to the jurisdiction of the county court of the county in which the conviction occurred. The powers and duties of the county court, the county judge and the probation officer under whose supervision the probationer is placed, shall, with respect to such probationer, thereafter be the same as though the probationer were originally placed on probation by such county court, under such probation officer. Whenever a probationer is transferred to the jurisdiction of a county court as hereinabove provided, the supreme court shall transfer to the county court the judgment-roll of the case, or a certified copy thereof.

4. At any time during the probationary term of a person convicted and released on probation in accordance with the provisions of this section, the court before which, or the justice before whom, the person so convicted was convicted, or his successor, or the court

to which the person on probation is transferred as hereinabove provided, may in its or his discretion, revoke and terminate such probation. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time thereafter within the longest period for which the defendant might have been sentenced, or, if judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect for its unexpired term. (Amended by L. 1905, ch. 656; L. 1909, ch. 217; L. 1910, ch. 346, in effect Sept. 1, 1910.)

New.

People ex rel. Benton v. Court of Sessions (1893), 66 Hun 553, 21 N. Y. Supp. 659; People v. Sickles (1898), 26 App. Div. 486, 50 N. Y. Supp. 377; People v. Bork (1884), 2 Crim. Rep. 71.

§ 484. Judgment to pay fine.

The power to remit a fine imposed by any court, whether of record or not of record, imposed for any criminal offense whatever, shall only be exercised as in this section provided. Any court of record, except an inferior court of local jurisdiction, which has imposed a fine for any criminal offense, or the presiding judge thereof, or any judge authorized to preside therein, shall have power in his discretion, on five days' notice to the district attorney of the county in which such fine was imposed, to remit such fine or any portion thereof. In case of a fine imposed by a court not of record or by any inferior court of local jurisdiction for any criminal offense whatever, the county judge of the county in which the fine was imposed, and in case of a fine imposed by such a court in the city of New York, the court of general sessions, or any judge thereof, upon five days' notice to the district attorney of the county in which such fine was imposed, shall have the same power. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every one dollar of the fine. (Amended by L. 1886, ch. 434.)

Derivation: L. 1876, ch. 61.

People ex rel. Bedell v. Kinney (1897), 24 App. Div. 311, 48 N. Y. Supp. 749; People v. Stock (1898), 26 App. Div. 565, 50 N. Y. Supp. 483; People ex rel. Stokes v. Risley (1885), 38 Hun 281; Matter of Bray (1890), 12 N. Y. Supp. 366; People ex rel. Gately v. Sage (1896), 17 Misc. 714, 41 N. Y. Supp. 531; rev'd 18 App. Div. 137, 43 N. Y. Supp. 372; People v. Garabed (1897), 20 Misc. 131, 45 N. Y. Supp. 827; People v. Jeratino (1909), 62 Misc. 587, 589, 116 N. Y. Supp. 1121.

§ 485. The judgment-roll.

When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had; and must, upon the service upon him of notice of appeal, immediately annex together and *file the following papers*, which constitute the judgment-roll:

1. A copy of the minutes of a challenge interposed by the defendant to a grand juror, and the proceedings and decision thereon;

2. The indictment and a copy of the minutes of the plea or demurrer;

3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, or to a juror who participated in the verdict, and the proceedings and decision thereon;

4. A copy of the minutes of the trial;

5. A copy of the minutes of the judgment;

6. A copy of the minutes of any proceedings upon a motion either for a new trial or in arrest of judgment;

7. The case, if there be one;

8. When the judgment is of death, the clerk, upon settling and filing of the case, must forthwith cause to be prepared and printed and forwarded to the clerk of the court of appeals the number of copies of the judgment-roll which are required by the rules of the court of appeals, which shall form the case and exceptions upon which the appeal shall be heard, and three copies shall also be furnished to the defendant's attorney and three to the district attorney and one to the governor of the state, and the remainder distributed according to the rules of the court of appeals. The expense of preparing and printing the judgment-roll in such case shall be a county charge, payable out of the court fund upon the certificate of the county clerk, approved by the county judge or a justice of the supreme court residing in the county in which the conviction was had. (Amended by L. 1885, ch. 520; L. 1887, ch. 493; L. 1889, ch. 379; L. 1897, ch. 427.)

New.

People v. Bradner (1887), 107 N. Y. 111, 44 Hun 234; People v. McQuade (1888), 110 N. Y. 284, 21 Abb. N. C. 448; People v. Trezza (1891), 128 N. Y. 529, 8 Crim. Rep. 295; People v. Willson (1897), 151 N. Y. 403; People v. Mayhew (1897), 151 N. Y. 407; People v. Conroy (1897), 151 N. Y. 543; People v. Mangam (1899), 29 Hun 263; Ostrander v. People (1883), 29 Hun 519; People v. Petrea (1883), 30 Hun 102, 128, 1 Crim. Rep. 203; People v. Hovey (1883), 30 Hun 357, 1 Crim. Rep. 331, 283; People v. Bork (1884), 31 Hun 367; People v. Osterhout (1884), 34 Hun 262; People v. Beckwith (1886), 42 Hun 368; People v. Sharp (1887), 45 Hun 504, 107 N. Y. 42; Con. People v. O'Donnell (1887), 46 Hun. 358, 7 Crim. Rep. 348, 15 St. Rep. 141; People v. Schad (1891), 58 Hun 572, 35 St. Rep. 148, 12 N. Y. Supp. 695; People v. O'Neil (1888), 18 St. Rep. 231; People v. Trezza (1891), 40 St. Rep. 482, 15 N. Y. Supp. 513; People v. Shea (1895), 69 St. Rep. 321; People v. Noonan (1891), 14 N. Y. Supp. 519; *People v. Tyrrel* (1885), 3 Crim. Rep. 148; People v. Havens (1885), 3 Crim.

Rep. 287 ; People ex rel. Hummel v. Trial Term (1906), 184 N. Y. 30, 82, 85 ; People v. Canepi, (1905), 181 N. Y. 394, 401 ; People v. Wiechers (1904), 179 N. Y. 465 ; People v. Wendell (1908), 128 App. Div. 487 ; People v. Jackson (1906), 114 App. Div. 700, 706, 100 N. Y. Supp. 126 ; People ex rel. Bidwell v. Pitts (1906), 111 App. Div. 320, 97 N. Y. Supp. 509 ; Matter of Bartholomew (1905), 106 App. Div. 371, 378, 94 N. Y. Supp. 512 ; People ex rel. Hummel v. Trial Term (1906), 184 N. Y. 30, 33 ; People ex rel. Patrick v. Frost (1909), 133 App. Div. 179, 117 N. Y. Supp. 524.

§ 485-a. Examination of convict before sentence.

It shall be the duty of the court in which any person shall be convicted of an offense punishable in a state prison, before passing the sentence therefor, to ascertain by the examination of such convict on oath, and in addition to such oath, by such other evidence as can be obtained, whether such convict had learned and practiced any mechanical trade, and in like manner such other facts tending to indicate the causes of the criminal character or conduct of such convict, as to the court shall seem proper and desirable, and the court shall direct the clerk of the court to enter such of the facts so ascertained, and such other facts as to the court shall seem proper and desirable, upon the minutes of the court, and said clerk shall include a copy thereof in the certified copy of the sentence of such convict which shall be delivered to the sheriff of the county in which such conviction shall be had. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. pt. 4, ch. 3, t. 2, § 70, as amended L. 1889, ch. 382, § 1.

CHAPTER II.

THE EXECUTION.

SECTION 486. Authority for the execution of a judgment, except of death.
487. Commitment of the defendant.
488. Judgment of imprisonment; by whom and how executed.
489. Duty of sheriff.
490. Duty of sheriff.
490a. Record of trial to be furnished by county clerk to officer in charge of criminal sentenced to a reformatory.

§ 486. Authority for the execution of a judgment, except of death.

When a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

Derivation: 4 R. S. 739, § 11.

People v. Bradner,(1887), 107 N. Y. 1; People ex rel. Dauchy v. Pitts (1907), 118 App. Div. 458, 103 N. Y. Supp. 258; Matter of Bartholomew (1905), 106 App. Div. 371, 372, 94 N. Y. Supp. 512; People ex rel. Barrett v. Wells (1908), 57 Misc. 663, 109 N. Y. Supp. 1081.

§ 487. Commitment of the defendant.

If the judgment be imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with. Where, however, the court has suspended sentence or where after imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, as provided in section four hundred and eighty-three of the code of criminal procedure, the defendant must forthwith be placed under the care and supervision of the probation officer of the court committing him, until the expiration of the period of probation and the compliance with the terms and conditions of the sentence or

of the suspension thereof. Where, however, the probation has been terminated, as provided in paragraph four of section four hundred and eighty-three of the code of criminal procedure, and the suspension of the sentence or of the execution revoked, and the judgment pronounced, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment be complied with. (Amended by L. 1901, ch. 372; L. 1903, ch. 613. In effect Sept. 1, 1903.)

Derivation: 4 R. S. 739, § 12.

People ex rel. Gately v. Sage (1896), 17 Misc. 714, 41 N. Y. Supp. 581, rev'd 18 App. Div. 187, 43 N. Y. Supp. 372; City of Hudson v. Granger (1898), 23 Misc. 404; 52 N. Y. Supp. 9; People ex rel. Dauchy v. Pitts (1907), 118 App. Div. 458, 103 N. Y. Supp. 258.

§ 488. Judgment of imprisonment; by whom and how executed.

When the judgment is imprisonment in a county jail, or a fine and that the defendant be imprisoned until it be paid, the judgment must be executed by the sheriff of the county. In all other cases, when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment.

New.

People ex rel. Gately v. Sage (1897), 18 App. Div. 187, 43 N. Y. Supp. 372 rev'g 17 Misc. 712, 41 N. Y. Supp. 581.

§ 489. Duty of sheriff.

If the judgment be imprisonment, except in a county jail, the sheriff must deliver a copy of the entry of the judgment upon the minutes of the court, together with the body of the defendant, to the keeper of the prison, in which the defendant is to be imprisoned.

New.

People ex rel. Dauchy v. Pitts (1907), 118 App. Div. 458, 103 N. Y. Supp. 258.

§ 490. Duty of sheriff.

The sheriff or his deputy, while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this state, in securing the defendant, and in retaking him if he escape, as if the sheriff were in his own county; and every person who

refuses or neglects to assist the sheriff, when so required, is punishable, as if the sheriff were in his own county.

Derivation: 4 R. S. 739 § 18.

§ 490-a. Record of trial to be furnished by county clerk, upon request, to officer in charge of criminal sentenced to a reformatory.

Every clerk of any court by which a criminal shall be sentenced to a reformatory shall, upon request of the officer in charge of any such reformatory, furnish to the officer having such criminal in charge a record containing a copy of the indictment, and of the plea, the names and residences of the justices presiding at the trial, also the jurors and of the witnesses sworn on the trial, a full copy of the testimony, and of the charge of the court, the verdict, the sentence pronounced, and the date thereof, which record, duly certified by the clerk, under his hand and official seal, may be used as evidence against such criminal in any proceeding taken by him for a release from imprisonment, by habeas corpus or otherwise. A copy of the testimony taken on the trial and of the charge of the court, shall be furnished to the clerk for the purposes of this section, by the stenographer acting upon the trial, or if no stenographer be present, by the district attorney of the county; but the court may direct the district attorney to make a summary of such testimony, which summary may, after approval and by direction of the court, be made a part of the record herein provided for; and if the court so directs, a copy of the testimony need not be made and may be omitted from such record. The stenographer or district attorney furnishing such copy or summary and the county clerk, shall be entitled to such compensation, in each case in which they shall perform the duties required by this section, as shall be certified to be just by the judge presiding at the trial, and shall be paid by the county in which the trial is had, as part of the court expenses. The clerk shall also, upon any such conviction and sentence, forthwith transmit to the general superintendent of the reformatory notice thereof. (Added by L. 1909, ch. 66, § 1. Amended by L. 1910, ch. 587, in effect Sept. 1, 1910.)

Derivation: L. 1887, ch. 711, § 7.

§ 490-b. [Added by L. 1909, ch. 66, and repealed by L. 1909, ch. 240, § 85.]

TITLE X.

GENERAL PROVISIONS IN RELATION TO THE PUNISHMENTS OF CRIMES.

CHAPTER I. The death penalty.
II. Second offenses, habitual criminals, and special penal discipline.

CHAPTER I.

THE DEATH PENALTY.

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503. When day of execution passed, etc., convict to be brought up by warrant.
504. Court to inquire, etc.; when to direct execution.
505. Death penalty; mode of infliction.
506. Death penalty; where inflicted.
507. Death penalty; who to be present.
508. Death penalty; certificate after execution.
509. Death penalty; disability of agent and warden to execute warrant.

§ 491. Warrant for execution of convict.

When a defendant is sentenced to the punishment of death, the judge or judges holding the court at which the conviction takes place, or a majority of them, of whom the judge presiding must

be one, must make out, sign and deliver to the sheriff of the county, a warrant, stating the conviction and sentence, and appointing the week within which sentence must be executed. Said warrant must be directed to the agent and warden of the state prison of this state designated by law as the place of confinement for convicts sentenced to imprisonment in a state prison in the judicial district wherein such conviction has taken place, commanding such agent and warden to do execution of the sentence upon some day within the week thus appointed. Within ten days after the issuing of such warrant, the said sheriff must deliver the defendant, together with the warrant, to the agent and warden of the state prison therein named. From the time of said delivery to the said agent and warden, until the infliction of the punishment of death upon him, unless he shall be lawfully discharged from such imprisonment, the defendant shall be kept in solitary confinement at said state prison, and no person shall be allowed access to him without an order of the court, except the officers of the prison, his counsel, his physician, a priest or minister of religion, if he shall desire one, and the members of his family. (Amended by L. 1888, ch. 489.)

Derivation: 4 R. S. 657, § 11.

People ex rel. Kemmler v. Durston (1890), 119 N. Y. 569; People ex rel. Trezza v. Brush (1891), 60 Hun 401, 15 N. Y. Supp. 512, aff'd 128 N. Y. 582; Matter of Molineaux v. Collins (1904), 177 N. Y. 307.

§ 492. Time of execution.

The week so appointed must begin not less than four weeks and not more than eight weeks after the sentence. The time of execution within the said week shall be left to the discretion of the agent and warden to whom the warrant is directed; but no previous announcement of the day or hour of the execution shall be made, except to the persons who shall be invited or permitted to be present at said execution as hereinafter provided. (Amended by L. 1888, ch. 489.)

Derivation: 4 R. S. 658, § 12.

People ex rel. Kemmler v. Durston (1890), 119 N. Y. 569; McElvaine v. Brush (1891), 8 Crim. Rep. 303; People ex rel. Trezza v. Brush (1891), 60 Hun 401, 15 N. Y. Supp. 512, aff'd 128 N. Y. 582.

§ 493. Judge must transmit certain papers to governor.

The judge, presiding at the term at which the conviction took

place, must immediately thereupon transmit to the governor a statement of the conviction and sentence, with the notes of testimony taken upon the trial by him or the notes, written out, taken by a stenographer or assistant stenographer, attending the court or term pursuant to law.

Derivation: 4 R. S. 658, § 13, as amended L. 1847, ch. 328, § 1.

§ 494. Governor may consult judges, etc.

The governor is authorized to require the opinion of the judges of the court of appeals, justices of the supreme court, and the attorney-general, or of any of them, upon a statement so furnished.

Derivation: 4 R. S. 658, as amended L. 1847, ch. 328, § 1.

§ 495. Governor only to reprieve, etc., except as provided in the following sections.

No judge, court, or officer, other than the governor, can reprieve or suspend the execution of a defendant sentenced to the punishment of death, except where a sheriff is authorized so to do, in a case and in the manner prescribed in the following sections of this chapter. This section does not apply to a stay of proceedings upon an appeal or writ of error.

Derivation: 4 R. S. 658, § 15.

§ 495-a. Proceedings when person under sentence of death is declared insane.

If a defendant in confinement under sentence of death appears to be insane, the governor may appoint a commission of not more than three disinterested persons to examine him, and report to the governor as to his sanity at the time of the examination. The commission must summarily proceed to make their examination. Before commencing they must take the oath prescribed in the code of civil procedure to be taken by referees. They must be attended by the district attorney of the county in which the murder was committed, upon at least seven days' notice to him, and may call and examine witnesses and compel their attendance. The counsel for the defendant may take part in the proceedings. When the commissioners have concluded their examination, they must forthwith

report the facts to the governor with their opinion thereon. Whenever any person under sentence of death shall be found insane by such commission, the governor may, in his discretion, order his removal to a state hospital for insane convicts, there to remain until restored to his right mind, and it shall be the duty of the medical superintendent of such hospital, whenever in his opinion, said convict is cured of his insanity, to report the fact to the state commission in lunacy and a justice of the supreme court of the district in which said hospital is situated, which justice shall thereupon inquire into the truth of such fact, and if the same be proved to his satisfaction, he shall so certify it under his official hand to the clerk of the court in which such convict was sentenced, and cause him, the said convict, to be returned to the custody of the warden of the state prison whence he came, there to be dealt with according to law. (Added by L. 1909, ch. 66, § 1. Am'd by L. 1910, ch. 338, in effect May 21, 1910.)

Derivation: L. 1874, ch. 446, t. 1, art. 2, § 21, as amended by L. 1876, ch. 267, § 1.

§ 496. [Repealed by L. 1910, ch. 338, § 2, in effect May 21, 1910.]

§ 497. [Repealed by L. 1910, ch. 338, § 2, in effect May 21, 1910.]

§ 498. Examination; suspension of execution.

If it be found by the examination that the defendant is insane, the warden must suspend execution of the warrant directing the defendant's death, until he receives a warrant from the governor directing that the defendant be executed. (Amended by L. 1910, ch. 338, in effect May 21, 1910.)

Derivation: 4 R. S. 658, § 18.

§ 499. Governor's duty.

The governor upon the receipt of the certificate of the justice of the supreme court, as provided in section four hundred and ninety-five-a, that the defendant is cured of his insanity, and as soon as he is satisfied of the sanity of the defendant, or of his restoration to sanity, must issue his warrant, appointing a time and place for the execution of the defendant, pursuant to his sentence, unless the sentence is commuted or the convict pardoned, and may in the meantime give directions for the disposition and custody of the defendant. (Amended by L. 1910, ch. 338, in effect May 21, 1910.)

Derivation: 4 R. S. 658, § 19.

§ 500. If female convict is pregnant, warden of state prison to impanel jury of physicians.

If there is reasonable ground to believe that a female defendant, sentenced to the punishment of death, is pregnant, the warden of the state prison having custody of the defendant must impanel a jury of six physicians to inquire into her pregnancy. A physician acting as a juror upon such an inquisition, need not be qualified to serve as a juror in a court of record. (Amended by L. 1910, ch. 338, in effect May 21, 1910.)

Derivation: 4 R. S. 658, § 20.

§ 501. Inquisition; suspension of execution.

The inquisition of the jury must be signed by the jurors and the warden of the prison. If it is found by the inquisition that the defendant is quick with child, the warden must suspend the execution of the warrant directing her execution until he receives a warrant from the governor directing that the convict be executed. (Amended by L. 1910, ch. 338, in effect May 21, 1910.)

Derivation: 4 R. S. 658, 659, §§ 20, 21, 22.

§ 502. Warden to transmit inquisition to governor; governor's duty.

The warden must immediately transmit the inquisition to the governor, who, as soon as he is satisfied that the defendant is no longer quick with child, may issue his warrant, appointing a time and place for her execution, pursuant to her sentence or may commute her punishment to imprisonment for life. (Amended by L. 1910, ch. 338, in effect May 21, 1910.)

Derivation: 4 R. S. 659, §§ 21, 22.

§ 503. When day of execution passed, etc., convict to be brought up by warrant.

Whenever, for any reason, other than insanity or pregnancy, a defendant, sentenced to the punishment of death, has not been executed pursuant to the sentence, at the time specified thereby, and the sentence or judgment inflicting the punishment stands in full force, the court of appeals, or a judge thereof, or the supreme court, or a justice thereof, upon application by the attorney-general, or of the district attorney of the county where the conviction was had, must make an order, directed to the agent and warden or other officer in whose custody said defendant may be, commanding him to bring the convict before the court of appeals or a term of the appellate division of the supreme court in the department, or a term of the supreme court in the county where the conviction was had. If the defendant be at large, a warrant may be issued by the court of appeals or a judge thereof, or by the supreme court, or a justice thereof, directing any sheriff or other officer to bring the defendant before the court of appeals or a term of the appellate division of the supreme court, or before a term of the supreme court in that county. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

Derivation: 4 R. S. 659, § 23.

People ex rel. Kemmler v. Durston (1890), 119 N. Y. 569; Matter of Buchanan (1895), 146 N. Y. 264; People v. Lyons (1888), 6 Crim. Rep. 134; People ex rel. Patrick v. Frost (1909), 135 App. Div. 701.

§ 504. Court to inquire, etc.; when to direct execution.

Upon the defendant being brought before the court, it must inquire into the circumstances, and if no legal reason exists against the execution of the sentence, it must issue its warrant to the agent and warden of the state prison mentioned in the original warrant and sentence, under the hands of the judge or judges, or a majority of them, of whom the judge presiding must be one, commanding the agent and warden to do execution of the sentence during the week appointed therein. The warrant must be obeyed by the agent and warden accordingly. The time of execution within said week shall be left to the discretion of the agent and warden to whom the warrant is directed; but no previous announcement of the day or *hour of the execution* shall be made, except to the persons who shall

be invited or permitted to be present at said execution as hereinafter provided. (Amended by L. 1888, ch. 489.)

Derivation: 4 R. S. 659, § 24.

People ex rel. Kemmler v. Durston (1890), 119 N. Y. 569; Matter of Buchanan (1895), 146 N. Y. 264; Hawkins v. Mayor, etc. (1900), 66 St. Rep. 628; Anargyros v. Cigarette Co. (1900), 66 St. Rep. 627; People v. Lyons (1888), 6 Crim. Rep. 134; People ex rel. Patrick v. Frost (1909), 135 App. Div. 701.

§ 505. Death penalty; mode of infliction.

The punishment of death must, in every case, be inflicted by causing to pass through the body of the convict, a current of electricity of sufficient intensity to cause death, and the application of such current must be continued until such convict is dead. (Amended by L. 1888, ch. 405.)

Derivation: 4 R. S. 659, § 25.

People ex rel. Kemmler v. Durston (1890), 119 N. Y. 569, 55 Hun 65, 27 St. Rep. 967, 7 Crim. Rep. 355.

§ 506. Death penalty; where inflicted.

The punishment of death must be inflicted within the walls of the state prison designated in the warrant, or within the yard or inclosure adjoining thereto. (Amended by L. 1889, ch. 489.)

Derivation: 4 R. S. 659, § 26; L. 1885, ch. 258, § 1.

People ex rel. Kemmler v. Durston (1890), 119 N. Y. 569.

§ 507. Death penalty; who to be present.

It is the duty of the agent and warden to be present at the execution, and to invite the presence, by at least three days' previous notice, of a justice of the supreme court, the district attorney, and the sheriff of the county where the conviction was had, together with two physicians and twelve reputable citizens of full age, to be selected by said agent and warden. Such agent and warden must, at the request of the criminal, permit such ministers of the gospel, priests or clergymen of any religious denomination, not exceeding two, to be present at the execution; and in addition to the persons designated above, he shall also appoint seven assistants or deputy sheriffs who shall attend the execution. He shall permit no other person to be present at such execution except those designated in this section. Immediately after the execution a post-mortem examination of the body of the convict shall be made by the physicians present at the execution, and their report in writing

stating the nature of the examination, so made by them, shall be annexed to the certificate hereinafter mentioned and filed therewith. After such post-mortem examination, the body, unless claimed by some relative or relatives of the person so executed, shall be interred in the graveyard or cemetery attached to the prison, with a sufficient quantity of quick-lime to consume such body without delay; and no religious or other services shall be held over the remains after such execution, except within the walls of the prison where said execution took place, and only in the presence of the officers of said prison, the person conducting said services and the immediate family and relatives of said deceased prisoner.

Any person who shall violate or omit to comply with any provision of this section shall be guilty of a misdemeanor. (Amended by L. 1887, ch. 31; L. 1888, ch. 489; L. 1892, ch. 16.)

Derivation: 4 R. S. 659, § 27, L. 1835, ch. 258, § 2.

People ex rel. Kemmler v. Durston (1890), 119 N. Y. 570; Matter of Molineaux v. Collins (1904), 177 N. Y. 398.

§ 508. Death penalty; certificate after execution.

The agent and warden attending the execution must prepare and sign a certificate, setting forth the time and place thereof, and that the convict was then and there executed, in conformity to the sentence of the court and the provisions of this Code, and must procure such certificate to be signed by all the persons present and witnessing the execution. He must cause the certificate, together with the certificate of the post-mortem examination mentioned in the preceding section, and annexed thereto, to be filed within ten days after the execution in the office of the clerk of the county in which the conviction was had. (Amended by L. 1888, ch. 489.)

Derivation: 659 §, 28, L. 1835, ch. 258, § 3.

People ex rel. Kemmler v. Durston (1890), 119 N. Y. 569; Matter of Molineaux v. Collins (1904), 177 N. Y. 398.

§ 509. Death penalty; disability of agent and warden to execute warrant.

In case of the disability, from illness or other sufficient cause, of the agent and warden to whom the death warrant is directed, to be present and execute said warrant, it shall be the duty of the

principal keeper of said prison, or such officer of said prison as may be designated by the superintendent of state prisons, to execute the said warrant, and to perform all the other duties by this act imposed upon said agent and warden. (Amended by L. 1888, ch. 489.)

Derivation: 4 R. S. 659, § 29, L. 1847, ch. 280, § 29; L. 1846, ch. 718.
People ex rel. Kemmler v. Durston (1890), 119 N. Y. 569.

CHAPTER II.

SECOND OFFENSES, HABITUAL CRIMINALS AND SPECIAL PENAL DISCIPLINE.

SECTION 510. When convict may be adjudged an habitual criminal.
511. Judgment accordingly, how entered, etc.
512. Persons so adjudged when liable to arrest and punishment.
513. Persons so adjudged when liable to arrest and punishment; evidence of character on subsequent trial.
514. Persons so adjudged when liable to arrest and punishment; always liable to search, etc.
514a. Evidence of imprisonment and discharge from state prison upon a trial for second offense.

§ 510. When convict may be adjudged an habitual criminal. When a person is hereafter convicted of a felony, who has been, before that conviction, convicted in this state of any other crime, he may be adjudged by the court, in addition to other punishment inflicted upon him, to be an habitual criminal. A person convicted of a misdemeanor, who has been already five times convicted in this state of a misdemeanor may be adjudged by the court in addition to, or instead of, other punishment, to be an habitual criminal.

Derivation: L. 1873, ch. 357.

People ex rel. Sloane v. Fallon (1899), 27 Misc. 19, 57 N. Y. Supp. 931; People v. Gibson (1906), 114 App. Div. 603, 99 N. Y. Supp. 1054.

§ 511. Judgment accordingly, how entered, etc. The judgment specified in the last section must be entered in a separate book, kept for that purpose. A copy of the entry, duly certified by the clerk of the court, is proof of the judgment, and a copy, so certified, must be forthwith transmitted to the police department of each city, and to the district attorney of each county in the state.

New.

People ex rel. Sloane v. Fallon (1899), 27 Misc. 19, 57 N. Y. Supp. 931; *People v. Gibson (1906)*, 114 App. Div. 603, 99 N. Y. Supp. 1052.

§ 512. Persons so adjudged when liable to arrest and punishment.

A person who has been adjudged an habitual criminal is liable to arrest summarily with or without warrant, and to punishment as a disorderly person, when he is found without being able to account therefor, to the satisfaction of the court or magistrate, either,

1. In possession of any deadly or dangerous weapon, or of any tool, instrument or material, adapted to, or used by criminals for, the commission of crime; or

2. In any place or situation, under circumstances giving reasonable ground to believe that he is intending or waiting the opportunity to commit some crime.

New.

People ex rel. Sloane v. Fallon (1899), 27 Misc. 19, 57 N. Y. Supp. 931; People v. Gibson (1906), 114 App. Div. 603, 99 N. Y. Supp. 1052

§ 513. Persons so adjudged when liable to arrest and punishment; evidence of character on subsequent trial.

A person who, having been adjudged an habitual criminal, is charged with a crime committed thereafter, may be described in the complaint, warrant or indictment thereafter, as an habitual criminal; and, upon proof that he has been adjudged to be such, the prosecution may introduce, upon the trial or examination, evidence as to his previous character, in the same manner and to the same extent as if he himself had first given evidence of his character and put the same in issue.

New.

People ex rel. Sloane v. Fallon (1899), 27 Misc. 19, 57 N. Y. Supp. 931; People v. Gibson (1906), 114 App. Div. 603, 99 N. Y. Supp. 1052.

§ 514. Persons so adjudged when liable to arrest and punishment; always liable to search, etc.

The person and the premises of every one who has been convicted and adjudged an habitual criminal shall be liable at all times to search and examination by any magistrate, sheriff, constable, or other officer, with or without warrant.

New.

Weiss v. Herlihy (1897), 23 App. Div. 618, 49 N. Y. Supp. 81; People ex rel. Sloane v. Fallon (1899), 27 Misc. 19, 57 N. Y. Supp. 931; People v. Gibson, (1906), 114 App. Div. 603, 99 N. Y. Supp. 1052.

§ 514-a. Evidence of imprisonment and discharge from state prison upon a trial for second offense.

The certificate of the warden or other chief officer of any state prison, or of the superintendent or other chief officer of any penitentiary under the seal of his office containing name of person, of statement of the court in which conviction was had, the date and term of sentence, length of time imprisonment, and date of discharge from prison or penitentiary, shall be prima facie evidence on the trial of any person for a second or subsequent offense, of the imprisonment and discharge of such person, either by pardon or expiration of his sentence, as the case may be, under the conviction stated and set forth in such certificate. But such certificate shall not in any other case be evidence of such imprisonment and discharge. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1878, ch. 290, § 1, as amended L. 1881, ch. 614, § 1.

TITLE X.

OF APPEALS.

CHAPTER I. Appeals, when allowed, and how taken.
II. Dismissing an appeal for irregularity.
III. Argument of the appeal.
IV. Judgment upon appeal.

CHAPTER I.

APPEALS, WHEN ALLOWED, AND HOW TAKEN.

SECTION 515. Writs of error and of *certiorari* abolished; appeal substituted.
516. Parties, how designated on appeal.
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518. In what cases by the people.
519. Appeal to the court of appeals.
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526. Appeal by the people, not to stay or affect the judgment until reversed.
527. Stay of proceedings, on appeal, etc.
528. Stay, upon appeal to court of appeals from judgment of supreme court, affirming judgment of conviction.
529. Certificate of stay not to be granted, but on notice to district attorney.
530, 531. Effect of the stay.
533. Transmitting the papers to the appellate court.

§ 515. Writs of error and of certiorari abolished; appeal substituted.

Writs of error and of *certiorari,* in criminal actions, and proceedings and special proceedings of a criminal nature, as they have heretofore existed, are abolished; and hereafter the only mode of reviewing a judgment or order in a criminal action, or special proceeding of a criminal nature, is by appeal. (Amended by L. 1884, ch. 372.)

New.

People ex rel. Taylor v. Forbes (1894), 143 N. Y. 219, 62 St. Rep. 176; Peo-

ple v. Priori (1900), 168 N. Y. 108; People ex rel. Comrs. v. Cullen (1896), 7 App. Div. 121, 40 N. Y. Supp. 1, 151 N. Y. 54; People ex rel. Bungart v. Wells (1901), 57 App. Div. 151, 68 N. Y. Supp. 59; Killoran v. Barton (1882), 26 Hun 650; People ex rel. Fuller v. Carney (1883), 29 Hun 48, 1 Crim. Rep. 270; People v. Bork (1884), 31 Hun 371; People v. Dempsey (1884), 31 Hun 527; People ex rel. Devoe v. Kelly (1884), 32 Hun 538; People ex rel. Scheres v. Walsh (1884), 33 Hun 346; People ex rel. Wright v. Ct. of Sessions (1887), 45 Hun 54; People ex rel. Gunther v. Murray (1891), 62 Hun 31, 16 N. Y. Supp. 325; People ex rel. Comrs. v. Glaze (1892), 65 Hun 561, 20 N. Y. Supp. 577, 48 St. Rep. 811; People ex rel. Barnes v. Ct. of Sessions (1895), 82 Hun 258, 63 St. Rep. 832, 31 N. Y. Supp. 373; People ex rel. Gunther v. Murray (1891), 41 St. Rep. 301, 16 N. Y. Supp. 325; McKeon v. People (1883), 1 Crim. Rep. 456; People v. Woodward (1883), 2 Crim. Rep. 43; People v. Bork (1884), 2 Crim. Rep. 75; People v. Havens (1885), 3 Crim. Rep. 287; People ex rel. Reavey v. Walsh (1887), 5 Crim. Rep. 527; People ex rel. Vitan v. Vitan (1890), 20 Abb. N. C. 298, 8 Crim. Rep. 27; People ex rel. Hummel v. Trial Term (1906), 184 N. Y. 30, 32; People ex rel. Dawkins v. Frost (1908), 129 App. Div. 498; People v. Jackson (1906), 114 App. Div. 700, 100 N. Y. Supp. 126; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 607, 94 N. Y. Supp. 1037; People v. Shiavi (1904), 96 App. Div. 486, 89 N. Y. Supp. 564; People v. Jacobs (1906), 51 Misc. 72, 100 N. Y. Supp. 734; People ex rel. Edwards v. The Warden (1902), 37 Misc. 635, 637, 76 N. Y. Supp. 286; Matter of Jones (1905), 181 N. Y. 389, 391.

§ 516. Parties, how designated on appeal.

The party appealing is known as the appellant, and the adverse party as the respondent. But the title of the action is not changed in consequence of the appeal.

New.

§ 517. In what cases appeal may be taken by defendant.

An appeal to the supreme court may be taken by the defendant from the judgment on a conviction after indictment, except that when the judgment is of death, the appeal must be taken direct to the court of appeals, and upon the appeal, any actual decision of the court in an intermediate order or proceeding forming a part of the judgment-roll, as prescribed by section four hundred and eighty-five, may be reviewed. (Amended by L. 1887, chap. 493.)

New.

People v. Loppy (1891), 128 N. Y. 629; People v. Wilson (1897), 151 N. Y. 403; People v. Mayhew (1897), 151 N. Y. 607; People v. Priori (1900), 168 N. Y. 108; People v. Rutherford (1900), 47 App. Div. 211; 62 N. Y. Supp. 224; People v. Bates (1901), 61 App. Div. 560, 71 N. Y. Supp. 123; People v. Glen (1901), 64 App. Div. 174, 71 N. Y. Supp. 893, 178 N. Y. 395; People v. Mandano (1888), 29 Hun 263; People v. Ostrander (1883), 29 Hun 519; People v. Callahan (1883), 29 Hun 581; People v. Bork (1883), 31 Hun 372, 1 Crim. Rep. 394, 2 id. 75; *People v. Osterhout* (1884), 34 Hun 262, 3 Crim. Rep. 446; People v. Beck-

with (1886), 42 Hun 368; People v. Schad (1891), 58 Hun 572, 35 St. Rep. 148, 12 N. Y. Supp. 695; Bishop v. Chamberlain (1888), 17 St. Rep. 76; People v. Noonan (1891), 38 St. Rep. 857, 14 N. Y. Supp. 519; People v. Trezza (1891), 40 St. Rep. 482, 15 N. Y. Supp. 513; People v. Shea (1895), 69 St. Rep. 321; People v. Petrea (1882), 1 Crim. Rep. 203, 30 Hun 102, 128; People v. Hovey (1893), 1 Crim. Rep. 283, 331, 30 Hun 354; People v. Mangano (1888), 1 Crim. Rep. 416; People v. Petmecky (1884), 2 Crim. Rep. 458; People v. Havens (1885), 3 Crim. Rep. 287; People v. McQuade (1888), 6 Crim. Rep. 1, 21 Abb. N. C. 448; People v. Lyons (1888), 6 Crim. Rep. 137; People v. Kelly (1889), 7 Crim. Rep. 40; People ex rel. Hummel v. Trial Term (1906), 184 N. Y. 30, 32, 33; People v. Canepi (1905), 181 N. Y. 398, 401; People v. Wendell (1908), 128 App. Div. 439; Matter of Montgomery (1908), 126 App. Div. 72; People v. Markham (1906), 114 App. Div. 388, 99 N. Y. Supp. 1092; People v. Jackson (1906), 114 App. Div. 700, 100 N. Y. Supp. 126; People v. Carroll (1905), 105 App. Div. 147, 148, 93 N. Y. Supp. 926; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 604, 607, 614, 94 N. Y. Supp. 1087, People v. Sarvis (1902), 69 App. Div. 604, 605, 74 N. Y. Supp. 1067; People v. Cox (1901), 67 App. Div. 344, 348, 73 N. Y. Supp. 774; O'Neil v. Mansfield (1905), 47 Misc. 516, 521, 95 N. Y. Supp. 1009.

§ 518. In what cases by the people.

An appeal to the appellate division of the supreme court may be taken by the people in the following cases, and no other:

1. Upon a judgment for the defendant, on a demurrer to the indictment;

2. Upon an order of the court arresting the judgment. (Amended by L. 1882, ch. 360; L. 1895, ch. 880, in effect Jan. 1, 1896.)

Derivation: L. 1879, ch. 176, L. 1880, ch. 538.

People v. Callahan (1883), 29 Hun 582; People v. Dempsey (1884), 31 Hun 528; People v. Beckwith (1886), 42 Hun 367; People v. Snyder (1887), 44 Hun 193; People ex rel. Jerome v. General Sessions (1906), 184 N. Y. 506; People v. Canepi (1905), 181 N. Y. 398, 402; People v. Dundon (1906), 113 App. Div. 870, 98 N. Y. Supp. 1048; People ex rel. Jerome v. Court of General Sessions (1906), 112 App. Div. 429, 98 N. Y. Supp. 557; O'Neil v. Mansfield (1905), 47 Misc. 516, 521, 95 N. Y. Supp. 1009.

§ 519. Appeal to the court of appeals.

An appeal may be taken from a judgment or order of the appellate division of the supreme court to the court of appeals in the following cases, and no other:

1. From a judgment affirming or reversing a judgment of conviction;

2. From a judgment affirming or reversing a judgment for the defendant, on a demurrer to the indictment, or from an order affirming, vacating or reversing an order of the court arresting judgment;

3. From a final determination affecting a substantial right of a defendant. (Amended by L. 1882, ch. 189; L. 1895, ch. 880, in effect Jan. 1, 1896.)

New.

People v. Boas (1888), 92 N. Y. 560; People ex rel. Brealin v. Lawrence (1888), 107 N. Y. 607; People v. Willson (1897), 151 N. Y. 408; People v. Mayhew (1897), 151 N. Y. 607; People v. Priori (1900), 168 N. Y. 108; Matter of Caruthers (1899), 158 N. Y. 188; People v. Helmer (1898), 154 N. Y. 613; People v. Drayton (1901), 168 N. Y. 13; People v. McCormack (1892), 48 St. Rep. 566; Matter of Jones (1905), 181 N. Y. 389, 391; People v. Malone (1901), 169 N. Y. 568, 569; People v. Miller (1902), 169 N. Y. 339, 344; People ex rel. Hummel v. Trial Term (1906), 184 N. Y. 30, 38.

§ 520. Appeal, a matter of right.

All appeals provided for in this chapter may be taken as a matter of right.

New.

People v. McKane (1894), 7 Misc. 371, 28 N. Y. Supp. 175.

§ 521. Must be taken within one year.

An appeal must be taken within one year after the judgment was rendered or the order entered. (Amended by L. 1892, ch. 189.)

New.

§ 522. Appeal, how taken.

An appeal must be taken by the service of a notice in writing on the clerk with whom the judgment-roll is filed, stating that the appellant appeals from the judgment.

New.

Kelly v. Cleary (1900), 56 App. Div. 467, 67 N. Y. Supp. 862; People v. Jackson (1906), 114 App. Div. 700, 100 N. Y. Supp. 126.

§ 523. Appeal, how taken.

If the appeal be taken by the defendant a similar notice must be served on the district attorney of the county in which the original judgment was rendered, and if such judgment be of death, the district attorney upon whom such notice is served must forthwith give notice thereof to the official in whose custody the defendant may be. (Amended by L. 1907, ch. 78, in effect April 16, 1907.)

New.

Tompkins v. Mayor (1897), 14 App. Div. 540, 43 N. Y. Supp. 878; **Kelly v. *Cleary (1900), 56* App. Div. 467, 67 N. Y. Supp. 862.**

§ 524. Appeal, how taken.

If it be taken by the people, a similar notice must be served on the defendant, if he be a resident of, or imprisoned in the city or county; or if not, on the counsel, if any, who appeared for him on the trial, if he reside or transact his business in the county. If the service cannot, after due diligence, be made, the appellate court, upon proof thereof, may make an order for the publication of the notice, in such newspaper, and for such time as it deems proper.

New.
People v. Snyder (1887), 44 Hun 198.

§ 525. Appeal, how taken.

At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal becomes perfected.

New.

§ 526. Appeal by the people, not to stay or affect the judgment until reversed.

An appeal taken by the people, in no case stays or affects the operation of a judgment in favor of the defendant, until the judgment is reversed.

New.
People v. Snyder (1887), 44 Hun 198.

§ 527. Stay of proceedings, on appeal, etc.

An appeal to the appellate division of the supreme court from a judgment of conviction, or other determination from which an appeal can be taken, stays the execution of the judgment or determination upon filing with the notice of appeal, a certificate of the court in which such conviction was had or such determination was made, provided said court was a court of record or of the supreme court, that in the opinion of said court there is reasonable doubt whether the judgment should stand, but not otherwise. Such certificate must recite briefly the particular rulings believed to have been erroneous together with any other grounds upon which it was granted. And the appellate court may order a new trial if it be satisfied that the verdict against the prisoner was against the weight of evidence or against the law, or that justice requires a new trial, whether any exception shall have been taken or not, in

the court below. (Amended by L. 1882, ch. 360; L. 1887, ch. 493; L. 1895, ch. 880; L. 1907, ch. 479.)

Derivation: 4 R. S. 736, § 23.

People v. McGloin (1882), 91 N. Y. 241; People v. Hovey (1883), 92 N. Y. 554; People v. Boas (1883), 92 N. Y. 560; People v. Guidici (1885), 100 N. Y. 503; People v. Donovan (1886), 101 N. Y. 632; People v. Trezza (1891), 125 N. Y. 740; People v. Brooks (1892), 131 N. Y. 321, 43 St. Rep. 298; People v. Sherlock (1901), 166 N. Y. 133; People v. Grossman (1901), 168 N. Y. 52; People v. Hess (1896), 8 App. Div. 145, 26 N. Y. Supp. 630; People v. Watkins (1897), 23 App. Div. 256, 48 N. Y. Supp. 856; People v. Dippold (1898), 30 App. Div. 63, 51 N. Y. Supp. 859; People v. Martin (1898), 33 App. Div. 286, 53 N. Y. Supp. 745; People v. Ray (1899), 36 App. Div. 394, 55 N. Y. Supp. 410; Matter of Tuthill (1899), 36 App. Div. 497, 55 N. Y. Supp. 657; People v. Glen (1901), 64 App. Div. 172, 71 N. Y. Supp. 893; People v. Williams (1883), 29 Hun 525; People v. Osterhout (1884), 34 Hun 262; People v. Jones (1885), 34 Hun 620; People v. Reavey (1886), 38 Hun 426; People v. Sweeney (1886), 41 Hun 343; People v. Wileman (1887), 44 Hun 189; People v. Sheppard (1887), 44 Hun 566; People v. Webster (1891), 59 Hun 402, 36 St. Rep. 837, 13 N. Y. Supp. 416; People v. Lesser (1894), 76 Hun 371, 27 N. Y. Supp. 750; People v. Gorman (1894), 83 Hun 606, 31 N. Y. Supp. 1064; People v. Huntington (1888), 17 St. Rep. 324, 1 N. Y. Supp. 526; People v. Emerson (1888), 20 St. Rep. 15, 5 N. Y. Supp. 374; People v. Izzo (1891), 39 St. Rep. 166, 14 N. Y. Supp. 906; People v. Zounek (1892), 49 St. Rep. 643, 20 N. Y. Supp. 756; People v. Terwilliger (1893), 56 St. Rep. 264, 26 N. Y. Supp. 674; Gates v. McDonald (1891), 14 N. Y. Supp. 907; People v. McKane (1894), 28 N. Y. Supp. 175; People v. Wiman (1894), 29 N. Y. Supp. 1034; Glover v. Silverman (1893), 6 Misc. 347, 26 N. Y. Supp. 779; People v. Stephenson (1895), 11 Misc. 142, 32 N. Y. Supp. 1112; People v. Valentine (1897), 19 Misc. 556, 44 N. Y. Supp. 903; Cullen v. Cullen (1898), 23 Misc. 80, 50 N. Y. Supp. 433; People v. Doody (1901), 34 Misc. 464, 69 N. Y. Supp. 724; People v. Shattuck (1909), 194 N. Y. 428; People v. Fabian (1908), 192 N. Y. 449; People v. Huson (1907), 187 N. Y. 100; People ex rel. Hummel v. Reardon (1906), 186 N. Y. 166, 112 App. Div. 867, 98 N. Y. Supp. 399; People v. Pekarz (1906), 185 N. Y. 480; People v. Calabur (1904), 91 App. Div. 531, 87 N. Y. Supp. 121; People v. Connolly (1903), 88 App. Div. 305, 84 N. Y. Supp. 617; People v. Pierson (1903), 80 App. Div. 415, 81 N. Y. Supp. 214; People v. Feldman (1902), 77 App. Div. 639, 79 N. Y. Supp. 115; People v. Chartoff (1902), 73 App. Div. 555, 558, 75 N. Y. Supp. 1088; People v. Masterson (1904), 88 N. Y. Supp. 748; People v. Meadows (1909), 62 Misc. 573; People v. Hummel, (1906), 49 Misc. 137, 98 N. Y. Supp. 713; People v. Dinser (1905), 49 Misc. 82, 83, 96 N. Y. Supp. 814; People v. Farina (1909), 134 App. Div. 110, 113.

§ 528. Stay, upon appeal to court of appeals from judgment of supreme court, affirming judgment of conviction.

An appeal to the court of appeals, from a judgment of the appellate division of the supreme court, affirming a judgment of conviction, stays the execution of the judgment appealed from, upon filing, with the notice of appeal, a certificate of a judge of *the court of appeals* or of a justice of the appellate division of the

supreme court, that in his opinion there is reasonable doubt whether the judgment should stand, but not otherwise. When the judgment is of death, an appeal to the court of appeals stays the execution of course until the determination of the appeal. When the judgment is of death, the court of appeals may order a new trial, if it be satisfied that the verdict was against the weight of evidence or against law, or that justice requires a new trial, whether any exception shall have been taken or not in the court below. (Amended by L. 1882, ch. 360; L. 1887, ch. 493; L. 1895, chs. 119, 880; L. 1897, ch. 427.)

Derivation: 4 R. S. 736, § 23.

People v. Bradner (1887), 107 N. Y. 18; People v. Driscoll (1887), 107 N. Y. 414, 12 St. Rep. 253; People v. Lyons (1888), 110 N. Y. 618; People v. Kelly (1889), 118 N. Y. 647; People v. Stone (1889), 117 N. Y. 480; People v. Fish (1891), 125 N. Y. 136, 34 St. Rep. 842; People v. Loppy (1891), 128 N. Y. 629; People v. Taylor (1893), 138 N. Y. 398, 52 St. Rep. 918; People v. Shea (1895), 147 N. Y. 80; People v. Corey (1896), 148 N. Y. 493, 157 N. Y. 351; People v. Hoch (1896), 150 N. Y. 291; People v. Mayhew (1897), 151 N. Y. 607; People v. Constantino (1897), 153 N. Y. 24; People v. Decker (1898), 157 N. Y. 194; People v. Thorn (1898), 156 N. Y. 299; People v. Carbine (1898), 156 N. Y. 416; Matter of the Mayor (1898), 157 N. Y. 408; People v. Place (1899), 157 N. Y. 596; People v. Zegouras (1900) 163 N. Y. 260; People v. Newfeld (1900), 165 N. Y. 47; People v. Sherlock (1901), 166 N. Y. 183; People v. Krist (1901), 168 N. Y. 31; People v. Schmidt (1901), 168 N. Y. 576; Vaughn v. Port Chester (1891), 60 Hun 401, 15 N. Y. Supp. 474; People v. Lyons (1888), 16 St. Rep. 660; People ex rel. Trezza v. Brush (1891), 39 St. Rep. 878, 15 N. Y. Supp. 512; People v. Hamilton (1893), 50 St. Rep. 22; People v. Strollo (1906), 191 N. Y. 67; People v. Nelson (1907), 189 N. Y. 141; People v. Huson (1907), 187 N. Y. 100; People v. Silverman (1905), 181 N. Y. 235, 239; People v. Breen (1905), 181 N. Y. 493, 499; People v. Raffo (1905), 180 N. Y. 434, 445; People v. Garmo (1904), 179 N. Y. 132; People v. Boggiano (1904), 179 N. Y. 270; People v. Tobin (1903), 176 N. Y. 288; People v. Flanigan (1903), 174 N. Y. 367; People v. Filippelli (1903), 173 N. Y. 509, 514; Hibbard v. Loeb (1903), 125 App. Div. 579; Matter of Montgomery (1908), 126 App. Div. 76; People ex rel. Hummel v. Reardon (1906), 112 App. Div. 869, 98 N. Y. Supp. 399; People v. Connolly (1903), 88 App. Div. 302, 84 N. Y. Supp. 617; People v. Young (1902), 72 App. Div. 9, 14, 76 N. Y. Supp. 275; People ex rel. Patrick v. Frost (1909), 133 App. Div. 179, 117 N. Y. Supp. 524; People v. Fiorentino (1910), 197 N. Y. 560.

§ 529. Certificate of stay not to be granted except on notice to district attorney.

Upon an appeal on a conviction of felony or misdemeanor an application for a certificate of reasonable doubt made pursuant to section five hundred and twenty-seven of this code must be heard and determined either by the court in which such conviction was had, provided said court is a court of record, or by a regularly ap-

pointed special term of the supreme court held within the judicial district in which the conviction was had. An application for such a certificate, made pursuant to section five hundred and twenty-eight of this code, must be made either to a judge of the court of appeals or to a justice of the appellate division of the supreme court from the judgment of which the appeal is taken. In either case such an application must be founded upon the record of the cause and a notice of motion duly served on the district attorney of the county where the conviction was had, or upon such record and an order to show cause granted either by the trial judge or by a justice of the supreme court; the moving papers must contain a formal specification of the particular rulings alleged to have been erroneous and of any other grounds upon which the application is based and at least two days' notice of the time and place for hearing such application must be given the district attorney of the county in which the conviction was had. The judge or justice granting such order to show cause may in his discretion stay execution of the judgment of conviction until the determination of such application. When an application for such certificate shall have been made to and denied by the court in which such conviction was had or by the supreme court or in case of an appeal to the court of appeals by a judge of that court or a justice of the appellate division of the supreme court, no other application for such certificate shall be made. If an appeal to the appellate division of the supreme court shall not be brought on for argument by the defendant at the next term of the appellate division begun not less than ten days after the granting of such certificate, or if an appeal to the court of appeals shall not be brought on for argument by the defendant when the court of appeals shall have been in actual session for fifteen days after the granting of such certificate, the district attorney on two days' notice to the defendant may apply to the court, judge or justice, who granted the certificate, or to any judge or justice of the appellate court in which the appeal is pending, for an order vacating the certificate, and upon the entry of such an order the judgment shall be executed as though a certificate had never been granted to the defendant. (Amended by L. 1894, ch. 502; L. 1895, ch. 880; L. 1897, ch. 427; L. 1902, ch. 217; L. 1907, ch. 479.)

New.

People v. Bradner (1887), 107 N. Y. 1[illegible]; Tompkins v. Mayor (1897), 14 App.

Div. 540, 43 N. Y. Supp. 878; People v. Lyons (1898), 29 App. Div. 177, 51 N. Y. Supp. 811; People ex rel. Hummel v. Reardon (1906), 186 N. Y. 166; Carlisle v. Barnes (1905), 183 N. Y. 273; People ex rel. Hummel v. Reardon (1906), 112 App. Div. 867, 98 N. Y. Supp. 399.

§ 530. Effect of the stay.

If the certificate, provided in sections five hundred and twenty-seven and five hundred and twenty-eight, be given, the sheriff must, if the defendant be in his custody, upon being served with a copy of the order, keep the defendant in his custody, without executing the judgment, and detain him to abide the judgment upon the appeal.

New.

People v. McTameney (1883), 30 Hun 506; People v. Connolly (1908), 88 App. Div. 302, 84 N. Y. Supp. 617.

§ 531. Effect of the stay.

If, before the granting of the certificate, the execution of the judgment have commenced, the further execution thereof is suspended, and the defendant must be restored by the officer in whose custody he is, to his original custody.

New.

People v. McTameney (1883), 30 Hun 506.

§ 532. Transmitting the papers to the appellate court.

Upon the appeal being taken, the clerk, with whom the notice of appeal is filed, must, within ten days thereafter, without charge, transmit a copy of the notice of appeal and of the judgment roll, as follows:

1. If the appeal be to the appellate division of the supreme court, to the clerk of the department where the appeal is to be heard.

2. If it be to the court of appeals, to the clerk of that court. (Amended by L. 1895, ch. 880. In effect Jan. 1, 1896.)

New.

People v. McTameney (1883), 30 Hun 506; People v. Hill (1893), 73 Hun 475, 26 N. Y. Supp. 331.

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

SECTION 533. For what irregularity, and how dismissed.
534. Dismissal for want of return.

§ 533. For what irregularity, and how dismissed.

If the appeal be irregular in a substantial particular, but not otherwise, the court may, on any day in term, on motion of the respondent, upon five days' notice, served with copies of the papers on which the motion is founded, order it to be dismissed.

New.

§ 534. Dismissal for want of return.

The court may also, upon like motion, dismiss the appeal.

1. If the return be not made, as provided in section five hundred and thirty-two, unless for good cause they enlarge the time for that purpose.

2. If the appeal be not brought on for argument by the appellant as promptly after the return has been made as the circumstances of the case will reasonably admit. (Amended by L. 1897, ch. 427.)

New.

People ex rel. Hummel v. Reardon (1906), 112 App. Div. 870, 98 N. Y. Supp. 899; People v. Cornell (1909), 65 Misc. 452, 456.

CHAPTER III.

ARGUMENT OF THE APPEAL.

SECTION 535. Appeal to the appellate division, how and where brought to argument.
536. Appeal to court of appeals, how brought to argument.
537. Notice of argument to counsel for defendant.
538. Papers, by whom furnished, and effect of omission.
539. Judgment of affirmance may be without argument, if appellant fail to appear; reversal, only upon argument, though respondent fail to appear.
540. Number of counsel to be heard; defendant's counsel to close the argument.
541. Defendant need not be present.

§ 535. Appeal to the appellate division, how and where brought to argument.

An appeal to the appellate division of the supreme court may be brought to argument by either party, on ten days' notice, on any day, at a term held in the department in which the original judgment was given. (Amended by L. 1884, ch. 384; L. 1895, ch. 880. In effect Jan. 1, 1896.)

New.

People v. Nelson (1907), 188 N. Y. 237.

§ 536. Appeal to court of appeals, how brought to argument.

An appeal to the court of appeals may, in the same manner, be brought to argument by either party, on any day in term, and where the judgment appealed from is of death the appeal must be brought on for argument within six months from the taking of such appeal, unless the court, for good cause shown, shall enlarge the time for that purpose. (Amended by L. 1902, ch. 369. In effect Sept. 1, 1902.)

New.

§ 537. Notice of argument to counsel for defendant.

If a counsel, within five days after the appeal, have given notice to the district attorney, that he appears for the defendant, notice

of argument must be served on him, instead of the defendant; otherwise, notice must be served as the court may direct.

New.

§ 538. Papers, by whom furnished, and effect of omission.

When the appeal is called for argument, the appellant must furnish the court with copies of the notice of appeal and judgment-roll, except where the judgment is of death. If he fail to do so, the appeal must be dismissed, unless the court otherwise direct. (Amended by L. 1887, ch. 493.)

New.

People v. Hooghkerk (1884), 2 Crim. Rep. 212.

§ 539. Judgment of affirmance may be without argument, if appellant fail to appear; reversal, only upon argument, though respondent fail to appear.

Judgment of affirmance may be given, without argument, if the appellant fail to appear, or where the judgment appealed from is of death and it shall not have been brought on for argument within six months from the taking of such appeal, unless the court, for good cause shown, shall have enlarged said time. But judgment of reversal can only be given upon argument, though the respondent fail to appear. (Amended by L. 1902, ch. 369. In effect Sept. 1902.)

New.

People v. Bradner (1887), 44 Hun 235; People v. Hooghkerk (1884), 2 Crim. Rep. 212; People v. Nelson (1907), 188 N. Y. 237.

§ 540. Number of counsel to be heard; defendant's counsel to close the argument.

Upon the argument of the appeal, if the crime be punishable with death, two counsel on each side must be heard if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side. The counsel for the defendant is entitled to the closing argument.

New.

§ 541. Defendant need not be present.

The defendant need not personally appear in the appellate court.

New.

CHAPTER IV.

JUDGMENT, UPON APPEAL.

SECTION 542. Court to give judgment, without regard to technical errors, defects or exceptions, not affecting substantial rights.
543. May reverse, affirm or modify the judgment, and order a new trial, etc.
544. New trial.
545. Defendant to be discharged on reversal of judgment against him, where new trial is not ordered.
546. Judgment to be executed, on affirmance against the defendant.
547. Judgment of appellate court, how entered and remitted.
548. Papers returned, to be remitted.
549. Jurisdiction of appellate court ceases, after judgment remitted.

§ 542. Court to give judgment, without regard to technical errors, defects or exceptions, not affecting substantial rights.

After hearing the appeal, the court must give judgment, without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties.

New.

People v. Chacon (1886), 102 N. Y. 669; People v. Buddensieck (1886), 103 N. Y. 487; People v. Johnson (1887), 104 N. Y. 213; People v. Dimick (1887), 107 N. Y. 13; People v. Corey (1896), 148 N. Y. 493; People v. Youngs (1896), 151 N. Y. 210; People v. Dorthy (1898,) 156 N. Y. 243; Brooks v. Rochester Ry. Co. (1898), 156 N. Y. 249; People v. Decker (1898), 157 N. Y. 191; People v. Coombs (1899), 158 N. Y. 540; People v. Fielding (1899), 158 N. Y. 557; People v. Meyer (1900), 163 N. Y. 270; People v. Zegouras (1900), 163 N. Y. 361; People v. Prioi (1900), 164 N. Y. 468; People v. Main (1901), 166 N. Y. 52; People v. Pugh (1901), 167 N. Y. 524; People v. Kerns (1896), 7 App. Div. 540, 40 N. Y. Supp. 243; People v. Lytle (1896), 7 App. Div. 566, 40 N. Y. Supp. 153; People v. Hess (1896), 8 App. Div. 150, 40 N. Y. Supp. 486; People v. Doyle (1896), 11 App. Div. 449, 42 N. Y. Supp. 319; People v. Grauer (1896), 12 App. Div. 472, 42 N. Y. Supp. 721; Matter of St. Lawrence St. Hospital (1897), 13 App. Div. 436, 43 N. Y. Supp. 608; People v. Garrahan (1897), 19 App. Div. 348, 46 N. Y. Supp. 497; People v. Shinbourne (1898), 27 App. Div. 426, 50 N. Y. Supp. 51; Smith v. Holt (1899), 37 App. Div. 24, 55 N. Y. Supp. 731; People v. Stack (1899), 41 App. Div. 550, 58 N. Y. Supp. 691; People v. Fletcher (1899), 44 App. Div. 210, 60 N. Y Supp. 777; People v. Dorthy (1900), 50 App. Div. 53, 63 N. Y. Supp. 592, 156 N. Y. 237; Stiasny v. Metr. St. Ry. Co. (1901), 58 App. Div. 174, 68 N. Y. Supp. 694; Stevens v. Middleton (1882), 36 Hun 471; People v. Kelly (1883), 31 Hun 238; People v. Bork (1884), 31 Hun 363; People v. Irving (1884), 31 Hun 614, 95 N. Y. 141; People v. Burns (1884),

88 Hun 300; People v. Osterhout (1884), 84 Hun 261; People v. Richards (1887), 44 Hun 289; People v. Shark (1887), 45 Hun 499; Everson v. McMullen (1887), 45 Hun 578; People v. Connor (1889), 58 Hun 352; People v. Burton (1894), 77 Hun 505, 28 N. Y. Supp. 1081; People v. Marvin (1894), 79 Hun 312, 61 St. Rep. 47, 29 N. Y. Supp. 381; People v. MacKinder (1894), 80 Hun 48, 61 St. Rep. 528, 29 N. Y. Supp. 842; Skipworth v. Deyell (1894), 83 Hun 308, 31 N. Y. Supp. 918; People v. Stephenson (1895), 91 Hun 629, 36 N. Y. Supp. 595; People v. McQuade (1888), 15 St. Rep. 916, 1 N. Y. Supp. 155; Lehnen v. Purvis (1890), 29 St. Rep. 779, 9 N. Y. Supp. 910; People v. Brown (1893), 55 St. Rep. 108, 24 N. Y. Supp. 1111; People v. Larubia (1893), 55 St. Rep. 459; People v. Derringer (1893), 57 St. Rep. 141, 25 N. Y. Supp. 1012; Tillinghast v. Merrill (1894), 60 St. Rep. 549, 28 N. Y. Supp. 1069; People v. McKane (1894), 62 St. Rep. 840, 30 N. Y. Supp. 95; Union Bank, etc. v. Gilbert (1894), 64 St. Rep. 740, 31 N. Y. Supp. 945; People v. Farmer (1909), 194 N. Y. 272; People v. Strollo (1908), 191 N. Y. 67; People v. Van Gaasbeck (1907), 189 N. Y. 412; People v. Wenzel (1907), 189 N. Y. 288; People v. Alderdice (1907), 120 App. Div. 370; People v. Munroe, (1907), 119 App. Div. 707; People v. Hummel (1907), 119 App. Div. 154; People ex rel. Welch v. Warden (1907), 117 App. Div. 159, 102 N. Y. Supp. 374; People v. Koerner (1907), 117 App. Div. 49, 102 N. Y. Supp. 93; People v. Dolan (1906), 186 N. Y. 15; People v. Cascone (1906), 185 N. Y. 335; People v. Patrick (1905), 182 N. Y. 131, 176, 214, 215, 218; People v. Silverman (1905), 181 N. Y. 235, 242; People v. De Garmo (1904), 179 N. Y. 130; People v. Montgomery (1903), 176 N. Y. 228; People v. Flanigan (1903), 174 N. Y. 372; People v. Smith (1902), 172 N. Y. 210, 234; People v. Miller (1902), 169 N. Y. 339, 357; People v. Hall (1901), 169 N. Y. 184, 198; People v. Mallon (1906), 116 App. Div. 435, 101 N. Y. Supp. 814; People v. Myers (1906), 115 App. Div. 867, 101 N. Y. Supp. 291; People v. Lewis (1906), 111 App. Div. 559, 98 N. Y. Supp. 83; People v. Wolf (1905), 107 App. Div. 449, 454, 95 N. Y. Supp. 264; People v. Seeley (1905), 105 App. Div. 149, 152, 93 N. Y. Supp. 982; Rothchild v. Allen (1904), 90 App. Div. 232, 86 N. Y. Supp. 42; People v. Loomis (1902), 76 App. Div. 243, 248, 78 N. Y. Supp. 578; People v. Burns (1902), 78 App. Div. 611, 76 N. Y. Supp. 1022; People v. Young (1902), 72 App. Div. 9, 14, 76 N. Y. Supp. 275; People v. McGraw (1901), 66 App. Div. 372, 377, 72 N. Y. Supp. 679; People v. Camoroto (1909), 133 App. Div. 260, 117 N. Y. Supp. 655.

§ 543. May reverse, affirm or modify the judgment, and order a new trial, and on affirmance of capital conviction fix the time for the execution of the sentence.

Upon hearing the appeal the appellate court may, in cases where an erroneous judgment has been entered upon a lawful verdict, or finding of fact, correct the judgment to conform to the judgment or finding; in all other cases they must either reverse or affirm the judgment appealed from, and in cases of reversal, may, if necessary or proper, order a new trial. If the judgment of death is affirmed, the court of appeals, by an order under its seal, signed by a majority of the judges, shall fix the week during which the original sentence of death shall be executed, and such order shall

be sufficient authority to the agent and warden of any state prison for the execution of the prisoner at the time therein specified, and the agent and warden must execute the judgment accordingly. (Amended by L. 1897, ch. 427. In effect May 14, 1897.)

New.

People v. Bradner (1889), 107 N. Y. 1; People v. Palmer (1888), 109 N. Y. 413, 5 N. Y. 108, 43 Hun 408; People v. Wood, (1891), 126 N. Y. 249; People v. Wayman (1891), 128 N. Y. 585; People v. Griffin (1882), 27 Hun 596; People v. Bork (1884), 31 Hun 372; People ex rel. Devoe v. Kelly (1884), 32 Hun 538, 97 N. Y. 212; People ex rel. v. Risley (1885), 38 Hun 282; Winkler v. Schlager (1892), 64 Hun 83, 19 N. Y. Supp. 110; People v. Sanshawe (1892), 65 Hun 97 19 N. Y. Supp. 865; People v. Webster (1893), 68 Hun 19, 23 N. Y. Supp. 634; People v. Brown (1893), 71 Hun 606, 24 N. Y. Supp. 1111; Tyler v. Bd. of Supervisors (1891), 15 N. Y. Supp. 366; People v. Hughes (4892), 10 N. Y. Supp. 551; People v. Stoddard, (1892), 19 N. Y. Supp. 937; People v. Hagan (1891), 14 N. Y. Supp. 234; People v. Clarke (1892), 20 N. Y. Supp. 781; People v. Kennedy, (1893), 22 N. Y. Supp. 269; People v. Webster (1893), 22 N. Y. Supp. 635; People v. Shields (1901); 34 Misc. 257. 69 N. Y. Supp. 620; People ex rel. Henderson v. Iustices (1882), 1 Crim. Rep. 66; People v. Fitzpatrick (1883), 1 Crim.Rep. 430; People v. Schiavi (1904), 96 App. Div. 486, 89 N. Y. Supp. 564; People v. Wheeler (1903), 70 App. Div. 398, 79 N. Y. Supp. 453; People v. Molineaux (1901), 36 Misc. 435, 437, 73 N. Y. Supp. 806; People v. Eckerson (1909), 133 App. Div. 220, 117 N. Y. Supp. 418; People v. Fiorentino (1920), 197 N. Y.

§ 544. New trial.

When a new trial is ordered, it shall proceed in all respects as if no trial had been had.

New.

People v. Palmer (1888), 109 N. Y. 413, 43 Hun 409, 5 Crim. Rep. 109; People v. Webster (1891), 19 Hun 402, 13 N. Y. Supp. 416; People v. Cignorale (1888), 5 Crim. Rep. 98, 40 N. Y. 33; People v. Wheeler (1903), 79 App. Div. 398, 79 N. Y. Supp. 454; People v. Cornell (1909), 65 Misc. 452.

§ 545. Defendant to be discharged on reversal of judgment against him, where new trial is not ordered.

If a judgment against the defendant be reversed, without ordering a new trial, the appellate court must direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

New.

People v. Hill (1893), 75 Hun 474, 26 N. Y. Supp. 831; People v. Wheeler (1903), 79 App. Div. 398, 79 N. Y. Supp. 454.

§ 546. Judgment to be executed, on affirmance against the defendant.

On a judgment of affirmance against the defendant, the original judgment must be carried into execution as the appellate court may direct, and if the defendant be at large, a bench warrant may be issued for his arrest. If a judgment be corrected, the corrected judgment must be carried into execution as the appellate court may direct. (Amended by L. 1882, ch. 360.)

New.

People v. Cornell (1909), 65 Misc. 452.

§ 547. Judgment of appellate court, how entered and remitted.

When the judgment of the appellate court is given, it must be entered in the judgment book, and a certified copy of the entry forthwith remitted to the clerk with whom the original judgment roll is filed, or, if a new trial be ordered in another county, to the clerk of that county, unless the judgment be rendered in the absence of the adverse party, in which case, the court may direct it to be retained, not exceeding ten days.

New.

People v. Huffman (1897), 24 App. Div. 240, 48 N. Y. Supp. 482; Cottle v. N. Y. W. S. & B. R. Co. (1898), 27 App. Div. 604, 50 N. Y. Supp. 1008; People v. Smith (1899), 37 App. Div. 288, 55 N. Y. Supp. 932; People v. Drayton (1899), 41 App. Div. 42, 58 N. Y. Supp. 439; People v. Hall (1900), 51 App. Div. 64, 67 N. Y. Supp. 437; People v. O'Malley (1900), 52 App. Div. 49; 64 N. Y. Supp. 843; People v. Butler (1900), 55 App. Div. 367, 66 N. Y. Supp. 851; People v. Milks (1900), 55 App. Div. 387, 66 N. Y. Supp. 889; People v. Bosworth (1892), 64 Hun 88, 19 N. Y. Supp. 114; People v. Hill (1893), 73 Hun 475, 26 N. Y. Supp. 331; People v. Theobald (1895), 92 Hun 184, 36 N. Y. Supp. 498; Rogers v. Wendell (1889), 28 St. Rep. 301, 7 N. Y. Supp. 781; Lehnen v. Purvis (1890), 29 St. Rep. 779, 9 N. Y. Supp. 910; Matter of Derrick (1895), 71 St. Rep. 549, 36 N. Y. Supp. 518; People v. Stoddard (1892), 19 N. Y. Supp. 937; People v. Belsinger (1892), 81 N. Y. Supp. 187; In re Bronson's Estate (1893), 22 N. Y. Supp. 96; People v. McGovern (1903), 105 App. Div. 296, 299, 94 N. Y. Supp. 662; Matter of McFadden (1994), 96 App. Div. 58, 89 N. Y. Supp. 194; People v. McGraw (1901), 36 App. Div. 372, 378. 72 N. Y. Supp. 679; People v. Connolly, (1903), 88 App. Div. 306, 84 N. Y. Supp. 616.

§ 548. Papers returned, to be remitted.

The decision of the court and the return shall be remitted to the court below in the same form and manner as in civil actions. (Amended by L. 1884, ch. 505.)

New.

People v. Beckwith (1886), 42 Hun 368; People v. Bosworth (1892), 64 Hun 83,

19 N. Y. Supp. 114; People v. Hurlburt (1896), 92 Hun 50, 36 N. Y. Supp. 867; Rogers v. Wendell (1889), 28 St. Rep. 801, 7 N. Y. Supp. 781; Lehnen v. Purvis (1890), 29 St. Rep. 779, 9 N. Y. Supp. 910; Seddon v. Donald (1891), 36 St. Rep. 77, 12 N. Y. Supp. 719; Matter of Karge (1892), 45 St. Rep. 916, 18 N. Y. Supp. 724; People v. Hill (1893), 57 St. Rep. 294, 26 N. Y. Supp. 331; Senecal v. Steamboat Co. (1894), 61 St. Rep. 574, 29 N. Y. Supp. 884; People v. Lytle (1896), 74 St. Rep. 721, 40 N. Y. Supp. 153; People ex rel. Perkins v. Moss (1907), 187 N. Y. 420; People v. McGovern (1905), 105 App. Div. 296, 299, 94 N. Y. Supp. 662; Matter of McFadden (1904), 96 App. Div. 58, 89 N. Y. Supp. 104.

§ 549. Jurisdiction of appellate court ceases, after judgment remitted.

After the certificate of the judgment has been remitted, as provided in section five hundred and forty-seven, the appellate court has no further jurisdiction of the appeal, or of the proceedings thereon; except as provided in section five hundred and forty-three all orders, which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted, or by any court to which the cause may thereafter be removed. (Amended by L. 1897, ch. 427.)

New.

People v. Beckwith (1886), 42 Hun 368, 5 Crim. Rep. 233; People v. Hill (1893), 73 Hun 475, 26 N. Y. Supp. 331; People v. Brown (1893), 24 N. Y. Supp. 1115; People v. Lyons (1888), 6 Crim. Rep. 135.

TITLE XII.

OF MISCELLANEOUS PROCEEDINGS.

CHAPTER I. Bail.
II. Compelling the attendance of witnesses.
III. Examination of witnesses, conditionally.
IV. Examination of witnesses, on commission.
V. Inquiry into the insanity of the defendant, before or during the trial, or after conviction.
VI. Compromising certain crimes, by leave of the court.
VII. Dismissal of the action, before or after the indictment for want of prosecution or otherwise.
VIII. Remitting the punishment, in certain cases
IX. Proceedings against corporations.
X. Entitling affidavits.
XI. Errors and mistakes, in pleadings and other proceedings.
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CHAPTER I.

BAIL.

ARTICLE I. In what cases the defendant may be admitted to bail.
II. Bail, upon being held to answer, before indictment.
III. Bail, upon an indictment, before conviction.
IV. Bail, upon an appeal.
V. Deposit, instead of bail.
VI. Surrender of the defendant.
VII. Forfeiture of the undertaking of bail, or of the deposit of money
VIII. Recommitment of the defendant, after having given bail, or deposited money instead of bail.

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

SECTION 550. Admission to bail, defined.
551. Taking bail, defined.
552. Offenses not bailable.
553. In what cases defendant may be admitted to bail, before conviction.
554. In what cases he may be admitted to bail, before conviction, etc.
554a. Bail of certain railroad employes.
555. Nature of bail after conviction.
556. Nature of bail after conviction and upon appeal.

§ 550. Admission to bail, defined.

When the defendant is held to appear for examination, bail for such appearance may be taken either,

1. By the magistrate who issued the warrant or before whom the same is returnable, or in case both of said magistrates are incapacitated or are absent from the jurisdiction, and in case the amount of bail shall have been fixed by one or other of them, any other magistrate of like jurisdiction, or

2. By any judge of the supreme court.

3. By any judge of the court of general sessions. (Amended by L. 1908, ch. 167; L. 1909, ch. 411. In effect Sept. 1, 1909.)

Derivation: 4 R. S. 710, § 29.

§ 551. Taking bail, defined.

The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this state a specified sum.

New.

People v. Torn (1906), 110 App. Div. 676, 677, 97 N. Y. Supp. 523; Sutherland v. St. Lawrence County (1903), 42 Misc. 88, 85 N. Y. Supp. 696.

§ 552. Offenses not bailable.

The defendant cannot be admitted to bail except by a justice of the supreme court or by a judge of the court of general sessions where he is charged,

1. With a crime punishable with death.

2. With the infliction of a probably fatal injury upon another, and under such circumstances as that, if death ensue, the crime would be murder. (Amended by L. 1882, ch. 360; L. 1895, ch. 880; L. 1909, ch. 411. In effect Sept. 1, 1909.)

New.

People v. Barondess (1891), 8 Crim. Rep. 248.

§ 553. In what cases defendant may be admitted to bail, before conviction.

If the charge be for any other crime, he may be admitted to bail, before conviction, as follows:

1. As a matter of right, in cases of misdemeanor;

2. As a matter of discretion, in all other cases.

New.

Snead v. Bonnoil (1901), 166 N. Y. 329; People ex rel. Navagh v. Frink (1886), 41 Hun 195.

§ 554. In what cases he may be admitted to bail, before conviction, etc.

Before conviction, defendant may be admitted to bail:

1. For his appearance before the magistrate on the examination of the charge, before being held to answer.

2. To appear at the court to which the magistrate is required by section two hundred and twenty-one to return the depositions and statements upon the defendant being held to answer after examination.

3. After indictment, either upon the bench warrant issued for his arrest or upon an order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial. And any captain or sergeant of police, or acting sergeant of police, in any city or village of this state, must take bail for his appearance before a competent and accessible magistrate the next morning from any person arrested for a misdemeanor between eleven o'clock in the morning and eight o'clock the next morning, just as soon as the person offers himself as bail for the person or persons arrested. When such captain or sergeant of police, or acting sergeant of police, takes bail, he must take it by an undertaking in the form in this section mentioned, executed in his presence by the defendant and at least one surety, who must justify under oath, or by the deposit of money or personal property accompanied by an oath of ownership, in the cases and in such manner as hereinafter provided; and for these purposes the officer may administer all necessary oaths. The amount of bail taken by a captain or sergeant of police or acting sergeant of police, under this section, must be as follows: If the offense be the violation of a corporation ordinance, the amount of the bail must be one hundred dollars, except that if a conviction upon the charge would render the defendant liable only for a fine, the amount of the bail must be double the largest fine that could be imposed; if the conviction would render him liable to imprisonment for thirty days or less, the amount of bail must

be two hundred dollars; or, in such last mentioned case, it shall be in the discretion of such captain, sergeant of police or acting sergeant of police, to parole said prisoner, on his promise to appear on the following day before the proper magistrate. In all other cases the amount of bail must be five hundred dollars. In lieu of a bondsman, if the offense be the violation of a corporation ordinance where conviction renders the defendant liable to a fine only, he may give his personal undertaking, secured by a deposit with such captain or sergeant of police, or acting sergeant of police, of money or personal property equal in value to double the largest fine that can be imposed. If personal property, the person making or authorizing the deposit shall take and subscribe an oath, that he is the owner thereof, and authorized to make such deposit. A false oath in this particular is declared to be perjury and punishable accordingly. Money or personal property thus deposited conveniently transportable shall be taken to the court, by the officer making the arrest, at the time defendant is required to appear and, upon the conditions of the undertaking being satisfied, it shall be restored to the defendant. If the deposit be personal property which cannot conveniently be brought to court, the defendant shall be entitled to an order from the magistrate directing the delivery thereof to the owner after the conditions of the undertaking have been satisfied. The form of undertaking, with surety, must be as follows:

We, A B, defendant, and residing at ....., in....., and C D, surety, residing at....., hereby jointly and severally undertake that the above A B, defendant, shall appear and answer the complaint (describing it briefly) before the magistrate before whom he would be arraigned if not bailed on the .....day of ....., eighteen hundred and ninety....., and at..... o'clock, to answer to the complaint, and there remain to answer, subject to an order of the magistrate, and render himself in execution thereof, or if he fail to perform either of these conditions, then he will pay to the people of th estate of New York the sum of ..... dollars.

The form of the personal undertaking, with deposit, shall be as follows:

I, A B, defendant, residing at number ..... street, in the ..... of ....., hereby personally undertake and agree,

that I will appear and answer to the complaint of violating the ordinances of the corporation of ....., to wit: (here briefly state charge) before the magistrate before whom I would be arraigned if not bailed, on the ..... day of....., eighteen hundred and ninety....., at ..... o'clock in the ..... noon, to answer to the complaint, and there remain to answer, subject to any order of the magistrate, and render myself in execution thereof, or if I fail to perform either of these conditions, then I will pay to the people of the state of New York the sum of..... dollars, to secure which payment there has been deposited herewith (if money, state ..... amount; if personal property, briefly describe).

OATH AS TO OWNERSHIP.

State of .....
County of ..... } ss.:

..... being duly sworn, says, that he is the owner of the personal property, mentioned and described in the foregoing undertaking, and is authorized to, and hereby does, pledge and deposit the same, as security for the appearance of the defendant to answer the complaint made against him.

Subscribed and sworn to before me
the ..... day of ..... 189..

4. Whenever a child under the age of sixteen years is arrested charged with juvenile delinquency, a captain or lieutenant or sergeant of police, in any city may accept, in lieu of bail, the personal recognizance in writing, without security, of a parent, guardian or other lawful custodian of such child, to produce such child before the proper court or magistrate on the following day, at a time and place to be specified in said recognizance; and thereupon he shall place said child in the care and custody of the person executing the same who, on failure to so produce said child, pursuant to the terms of such recognizance, shall be liable to punishment by the court or magistrate, as for a criminal contempt in the manner provided in the judiciary law. A similar recog-

nizance may be taken by the court or magistrate for the subsequent production of such child at a time and place to be specified therein, pending the final termination of the proceedings, and noncompliance therewith shall subject the person giving the same to the same punishment. Such failure to produce the child shall in either case vacate the said recognizance and warrant the immediate arrest of the child by order of the court or magistrate. But nothing in this act contained shall authorize the acceptance of such personal recognizance for the production of a child who has been the subject of a crime or a witness to its commission by another. (Amended by L. 1896, ch. 556. In effect June 1, 1896. Subd. 4, added by L. 1903, ch. 329, in effect Sept. 1, 1903, amended by L. 1905, ch. 656; L. 1909, ch. 66, § 5; L. 1911, ch. 500, in effect June 28, 1911. Subd. 3, amended by L. 1906, ch. 338, in effect Sept. 1, 1906.)

New.

People v. Cornell (1909), 65 Misc. 452, 456.

§ 554-a. Bail of certain railroad employes.

Whenever a person employed as an engineer, fireman, motorman, conductor, trainman or otherwise, on a train or car of a steam, elevated or street surface railroad, is arrested in any city on a criminal charge, arising from an accident in connection with the operation of such train or car, resulting in an injury or death to a person or injury to property, such engineer, fireman, motorman, conductor, trainman or other employe, shall be immediately taken before a magistrate, if one is accessible, and otherwise, before a captain or sergeant of police, or acting sergeant of police, in charge of a police station in such city, and be given an opportunity to be admitted to bail. Such bail shall be taken in the same manner, so far as practicable, as is provided by section five hundred and fifty-four of this code, for the taking of bail in case of misdemeanors by a captain or sergeant of police, or acting sergeant of police in a city or village, except that the amount of bail shall be fixed by such officer at not exceeding one thousand dollars, and except that the undertaking shall provide for the appearance of the defendant before the magistrate, coroner, or other officer, who, except for this section, would be authorized to take such bail. Such officer may however in his discretion, instead of exacting bail release such employe on his own recognizance,

conditional for his appearance as above provided in case an undertaking is required.

Derivation: L. 1908, ch. 614.

§ 555. Nature of bail after conviction.

After the conviction of a crime not punishable with death, a defendant who has appealed, and when there is a stay of proceedings, but not otherwise, may be admitted to bail:

1. As a matter of right, when the appeal is from a judgment imposing a fine only;

2. As a matter of discretion in all other cases.

New.

Matter of Taylor (1894), 8 Misc. 177, 28 N. Y. Supp. 500, 60 St. Rep. 149 rev'd 142 N. Y. 219; People ex rel. Hummel v. Reardon (1906), 186 N. Y. 167, 112 App. Div. 869, 98 N. Y. Supp. 399; People v. Connolly (1903), App. Div. 305, 84 N. Y. Supp. 617.

§ 556. Nature of bail after conviction and upon appeal.

After conviction and upon an appeal, the defendant may be admitted to bail as follows:

1. If the appeal be from a judgment imposing a fine only, on the undertaking of bail, that he will pay the same, or such part of it as the appellate court may direct, if the judgment be affirmed or modified or the appeal be dismissed; or the certificate of reasonable doubt be vacated as provided in section five hundred and twenty-nine;

2. If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or if the certificate of reasonable doubt be vacated as aforesaid. (Amended by L. 1897, ch. 427.)

New.

People v. Bauman (1885), 3 Crim. Rep. 457; People ex rel. Hummel v. Reardon (1906), 186 N. Y. 167, 112 App. Div. 869, 98 N. Y. Supp. 399; People v. Connolly (1903), 88 App. Div. 306, 84 N. Y. Supp. 617.

ARTICLE II.

BAIL, UPON BEING HELD TO ANSWER, BEFORE INDICTMENT.

SECTION 557, 558. By what courts or magistrates defendant may be admitted to bail.
559. At what time defendant may be admitted to bail by a magistrate.
560. In cities, if crime be felony, application for admission to bail must be on notice.
561. Form of order, if made by the court.
562. Form of order, if made by a magistrate.
563. If application be denied by a magistrate, no subsequent application can be made to another magistrate.
564. Violation of last section a misdemeanor; admission to bail in such case, how revoked or vacated.
565. Construction of last two sections.
566. Decision final.
567. Bail, by whom taken.
568. How put in; and form of undertaking.
569. Qualifications of bail.
570–572. Bail, how to justify.
573. Bail may be examined as to sufficiency.
574. Other testimony may be received as to their sufficiency.
575. Decision as to their sufficiency; and filing affidavits of justification and undertaking.
576. On allowance of bail and execution of undertaking, defendant to be discharged; form of discharge.
577. If bail disallowed.

§ 557. By what courts or magistrates defendant may be admitted to bail.

When the defendant has been held to answer, as provided in section two hundred and eight, the admission to bail may be by the magistrate by whom he is so held if he be one of the magistrates mentioned in section one hundred and forty-seven, and the crime charged is a misdemeanor, or a felony punishable with imprisonment, not exceeding five years; or if he be a judge of the supreme court, or any judge authorized to preside in a court having jurisdiction to try indictments, in all cases where bail may be taken before conviction, as provided in section five hundred and fifty-four. (Amended by L. 1882, ch. 360.)

Derivation: 4 R. S. 710, § 29.

Northside Bank v. Good Cordage, etc. Co. (1904), 97 App. Div. 79, 89 N.

Y. Supp. 656; Sutherland v. St. Lawrence County (1870), 42 Misc. 44, 85 N. Y. Supp. 696; s. c. 101 App. Div. 301,

§ 558. By what courts or magistrates defendant may be admitted to bail.

When, by reason of the degree of the crime, the committing magistrate has not authority to admit to bail, the defendant may be admitted to bail by one of the officers having authority to admit to bail in the case, as provided in the second subdivision of the last section, or by the court to which the depositions and statements are returned by the committing magistrate, as provided in section two hundred and twenty-one, if the case be triable therein, or if not, by the court to which, after indictment, it may be sent or removed for trial.

Derivation: 4 R. S. 728, § 56.

Sutherland v. St. Lawrence County (1905), 101 App. Div. 301, 91 N. Y. Supp. 962.

§ 559. At what time defendant may be admitted to bail by a magistrate.

The defendant may be admitted to bail by a magistrate, as provided in the last two sections, upon being held to answer, or at any time before the return of the depositions and statement to the court. After that time he can be admitted to bail only by a judge presiding in the court in which the crime is triable, if it be sitting, or if not, by one of the magistrates mentioned in the second subdivision of section five hundred and fifty-seven.

Derivation: 4 R. S. 728, § 56.

People v. Hill (1893), 26 N. Y. Supp. 331.

§ 560. In cities, if crime be felony, application for admission to bail must be on notice.

In the several cities of this state, if the crime charged be a felony, the application for admission to bail must be upon notice of at least two days, to the district attorney of the county, unless the magistrate, by order, fixes a shorter time; and the committing magistrate, upon the like notice in writing, requiring him to do so, must transmit the depositions and statement, or a copy thereof, to the court or magistrate to whom the application for bail is to be made.

New.

§ 561. Form of order, if made by the court.

If the application be to the court, an order must be made granting or denying it, and if it be granted, stating the sum in which bail may be taken.

New.

§ 562. Form of order, if made by a magistrate.

If the application be to a magistrate, he must certify, in writing, his decision granting or denying the same; and if he grant the application, must state in the certificate the sum in which bail may be taken; which certificate he must cause to be forthwith filed with the clerk of the court to which the depositions and statement are required to be sent.

New.

People v. Petrea (1882), 1 Crim. Rep. 216.

§ 563. If application be denied by a magistrate, no subsequent application can be made to another magistrate.

If an application for admission to bail, made to a magistrate, be denied, not more than two subsequent applications therefor can be made to other magistrates, except that an application can be made to any magistrate mentioned in subdivision two of section five hundred and fifty-seven, if no application has been previously made to a magistrate therein.

New.

§ 564. Violation of last section a misdemeanor; admission to bail in such case, how revoked or vacated.

A violation of the last section is punishable as a misdemeanor, and the admission of the defendant to bail contrary thereto may be revoked by the magistrate who made it, or vacated by the court to which the depositions and statement are or must be sent, as provided in section two hundred and twenty-one or to which, after indictment, the action must be sent for trial.

New.

§ 565. Construction of last two sections.

The provisions of the last two sections shall not be construed to limit the power of any judge presiding in the court in which the offense is triable to let the defendant to bail.

New.

§ 566. Decision final.

The decision of the judge presiding in the court in which the crime is triable, granting or denying bail, is final, except as provided in section five hundred and sixty-three.

New.

§ 567. Bail, by whom taken.

If the defendant be admitted to bail by a magistrate, the bail may be taken by any magistrate in the county wherein the defendant is held to answer, as provided in section two hundred and eight. (Amended by L. 1904, ch. 202. In effect Sept. 1, 1904.)

New.

§ 568. How put in; and form of undertaking.

Bail is put in by written undertaking executed by sufficient surety [with or without the defendant, in the discretion of the magistrate], and acknowledged before the magistrate in substantially the following form:

"An order having been made on the day of , eighteen hundred and , by A. B., a justice of the peace of the town of [or as the case may be], that C. D. be held to answer upon a charge of [stating briefly the nature of the crime], upon which he has been duly admitted to bail in the sum of dollars.

"We, [C. D., defendant, if the defendant join in the undertaking], of [stating his place of residence and his occupation] and E. F., [and G. H. stating place of residence and occupation] surety or sureties [as the case may be], hereby undertake, jointly and severally, that the above-named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted; and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that he will pay to the people of the state of New York the sum of dollars" [inserting the sum in which the defendant is admitted to bail]. (Amended by L. 1882, ch. 360.)

New.

People v. Gilman (1891), 125 N. Y. 372, 35 St. Rep. 280; Paine v. Aldrich (1891), 14 N. Y. Supp. 540; People v. Torn (1906), 110 App. Div. 676, 677, 678, 97 N. Y. Supp. 523; Pernetti v. People (1904), 99 App. Div. 392, 91 N. Y. Supp. 210.

§ 569. Qualifications of bail.

The qualifications of bail are as follows:

1. He must be a resident, and a householder or freeholder within this state, and, unless the magistrate otherwise direct, within the county;

2. He must be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the magistrate, on taking bail, may require two sureties, or may allow two or more to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of one sufficient surety.

New.

§ 570. Bail, how to justify.

Except as prescribed in the next section, the bail may, in the exercise of a just discretion, be taken, and may justify, without notice to the district attorney, or reasonable notice of the intention to give bail may be required by the court or magistrate, to be given to the district attorney. When given, the notice shall be as prescribed in the next section.

New.

§ 571. Bail, how to justify.

In the several cities of this state, if the crime charged be a felony, a previous notice in writing of at least two days, of the time and place of giving the bail, must be served upon the district attorney of the county, stating:

1. The names, places or residence and occupations of the proposed surety or sureties;

2. A general description of the real or personal property of the surety or sureties, in respect to which they propose to justify as to their sufficiency, with the incumbrances thereon, by mortgage, judgment or otherwise, if any.

The district attorney may waive the giving of the notice herein provided for, or a shorter time than two days may be directed by the court or magistrate requiring the notice.

New.

§ 572. Bail, how to justify.

The surety or sureties must in all cases justify by affidavit,

taken before the magistrate. The affidavit must state that each of the sureties possesses the qualifications provided in section five hundred and sixty-nine.

New.

§ 573. Bail may be examined as to sufficiency.

The district attorney, or the magistrate, may thereupon further examine the sureties upon oath, concerning their sufficiency, in such manner as the magistrate may deem proper. The questions put to the sureties, and their answers, must be reduced to writing, and must be subscribed by them.

New.

§ 574. Other testimony may be received as to their sufficiency.

The magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may, from time to time, adjourn the taking of bail, to afford an opportunity of proving or disproving its sufficiency.

New.

§ 575. Decision as to their sufficiency, and filing affidavits of justification and undertaking.

When the examination is closed, the magistrate must make an order, either allowing or disallowing the bail, and must forthwith cause the same, with the affidavits of justification and the undertaking of bail, to be filed with the clerk of the court to which the depositions and statement must be sent, as prescribed in section two hundred and twenty-one.

New.

§ 576. On allowance of bail and execution of undertaking, defendant to be discharged; form of discharge.

Upon the allowance of the bail and the execution of the undertaking, the court or magistrate must make an order, signed by him, with his name of office, for the discharge of the defendant, to the following effect:

"To the sheriff of the county of , [or, in the city and county of New York, 'to the keeper of the city prison of the city of New York:'] A. B., who is detained by you on a commitment to answer a charge for the crime of [designating it gen-

erally], having given sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody."

New.

People ex rel. Albert v. Pool (1902), 77 App. Div. 148, 150, 78 N. Y. Supp. 1026; People v. Connolly (1903), 806, 88 N. Y. App. Div. 806, 84 N. Y. Supp. 617.

§ 577. If bail disallowed.

If the bail be disallowed, the defendant must be detained in custody until lawfully discharged. (Amended by L. 1882, ch. 360.)

New.

ARTICLE III.

BAIL, UPON AN INDICTMENT BEFORE CONVICTION.

SECTION 578. In misdemeanor, officer to take defendant before a magistrate.
579. In felony, to deliver him into custody.
580. Taking bail, when offense is bailable.
581. Bail, how put in; form of undertaking.
582. Sections applicable to qualifications of bail, to putting in and justifying bail, and to incidental proceedings.

§ 578. In misdemeanor, officer to take defendant before a magistrate.

When the crime charged in the indictment is a misdemeanor, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail as prescribed in sections three hundred and two and three hundred and five.

New.

§ 579. In felony, to deliver him into custody.

If the crime charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant, as prescribed in section three hundred and one.

New.

§ 580. Taking bail, when offense is bailable.

When the defendant is so delivered into custody, if the felony charged be bailable, and the amount of bail have been fixed, bail may be taken by the judge presiding in the court in which the indictment was found, or to which it is sent or removed, or by any magistrate in the county belonging to the class mentioned in the second division of section five hundred and fifty-seven.

New.

§ 581. Bail, how put in; form of undertaking.

The bail must be put in by a written undertaking, executed by a

sufficient surety, with or without the defendants, in the discretion of the magistrate, and acknowledged before the court or its clerks in open court or the magistrate in substantially the following form:

"An indictment having been found on the day of eighteen hundred and , in the *county court in the county of Albany* [or as the case may be] charging A. B. with the crime of [designating it generally], and he having been duly admitted to bail in the sum of dollars.

"We, A. B., defendant [if the defendant join in the undertaking], and C. D., surety or sureties, as the case may be, of [stating his place of residence and occupation], and E. F., of [stating his place of residence and occupation], hereby jointly and severally undertake that the above-named A. B. shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and if convicted, shall appear for judgment, and render himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars" [inserting the sum in which the defendant is admitted to bail]. (Amended by L. 1882, ch. 360; L. 1895, ch. 880.)

New.

§ 582. Sections applicable to qualification of bail, to putting in and justifying bail, and to incidental proceedings.

The provisions contained in sections five hundred and sixty-nine to five hundred and seventy-seven, both inclusive, apply to the qualifications of the sureties, and to all the proceedings respecting the putting in and justification of bail, and incidental thereto.

New.

ARTICLE IV.

BAIL UPON AN APPEAL.

SECTION 583. Who may admit to bail.
584. Notice of the application, when required.
585. Qualifications of bail, and how put in.

§ 583. Who may admit to bail.

In the cases in which the defendant may be admitted to bail upon an appeal, as provided in section five hundred and fifty-six, the order admitting him to bail may be made, either by the court from which the appeal is taken, or a judge thereof, or by the appellate court, or a judge thereof, or by a judge of the supreme court. (Amended by L. 1895, ch. 880.)

New.

People v. Connolly (1903), 88 App. Div. 306, 84 N. Y. Supp. 617.

§ 584. Notice of the application, when required.

The court or officer to whom the application for bail is made may require such notice thereof as he deems reasonable, to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

New.

People v. Connolly (1903), 88 App. Div. 306, 84 N. Y. Supp. 617.

§ 585. Qualifications of bail, and how put in.

The sureties must possess the qualifications, and the bail must be put in all respects, in the manner prescribed by sections five hundred and sixty-nine to five hundred and seventy-seven, both inclusive; except that the undertaking must be to the effect that the defendant will, in all respects, abide the orders and judgment of the appellate court upon the appeal, and will surrender himself in execution of the judgment if the certificate of reasonable doubt be vacated as provided in section five hundred and twenty-nine. (Amended by L. 1897, ch. 427.)

New.

People ex rel. Hummel v. Reardon (1906), 112 App. Div. 869, 98 N. Y. Supp. 899; *People v. Connolly* (1903), 88 App. Div. 306, 84 N. Y. Supp. 617.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

SECTION 586. Deposit, when and how made.
587. May be made after bail given, and before forfeiture; and in such case bail discharged.
588. Bail may be given after deposit; and in such case money deposited to be refunded.
589. Deposit to be applied to payment of judgment of fine, and surplus to be refunded.

§ 586. Deposit, when and how made.

The defendant, at any time after an order admitting him to bail, instead of giving bail, or a witness committed in default of an undertaking to appear and testify, instead of entering into such an undertaking, may deposit with the county treasurer of the county in which he is held to answer or appear, the sum mentioned in the order or commitment; and upon delivering to the officer, in whose custody he is, a certificate of the deposit, he must be discharged from custody. (Amended by L. 1892, ch. 220.)

New.

Gilbert v. Laidlaw (1886), 102 N. Y. 588; Egan v. Stevens (1886), 39 Hun 314; McShane v. Pinkham (1892), 46 St. Rep. 66, 19 N. Y. Supp. 969; Northside Bank v. Good Cordage, etc., Co. (1904), 97 App. Div. 78, 89 N. Y. Supp. 656; Matter of Rothchild v. Gould (1903), 84 App. Div. 196, 82 N. Y. Supp. 558; People ex rel. Meyer v. Gould (1902), 75 App. Div. 524, 525, 78 N. Y. Supp. 279; Sutherland v. St. Lawrence County (1903), 42 Misc. 45, 85 N. Y. Supp. 696.

§ 587. May be made after bail given, and before forfeiture; and in such case bail discharged.

If the defendant have given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the undertaking; and upon the deposit being made the bail is exonerated.

Derivation: 3 R. S. 487, §§ 37, 39.

§ 588. Bail may be given after deposit; and in such case money deposited to be refunded.

If money be deposited, as provided in the last section, bail may be given in the same manner as if it had been originally given upon the order for admission to bail, at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken must thereupon direct, in the order of allowance, that the money deposited be refunded by the county treasurer to the defendant; and it must be refunded accordingly.

Derivation: 3 R. S. 487, §§ 37, 39.

§ 589. Deposit to be applied to payment of judgment of fine, and surplus to be refunded.

When money has been deposited, if it remain on deposit and unforfeited at the time of a judgment for the payment of a fine, the county treasurer must, under direction of the court, apply the money in satisfaction thereof; and after satisfying the fine, must refund the surplus, if any, to the defendant.

New

McShane v. Pinkham (1892), 19 N. Y. Supp. 969; Kemp v. Store Co. (1893), 46 St. Rep. 67, 19 N. Y. Supp. 959.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

SECTION 590. Surrender, by whom, when and how made.
591. By whom, when and where defendant may be arrested for the purpose of a surrender.
592. On surrender before forfeiture, money deposited to be refunded; order therefor, how obtained.

§ 590. Surrender, by whom, when and how made.

At any time before the forfeiture of the undertaking, any surety may surrender the defendant in his exoneration, or the defendant may surrender himself, to the officer to whose custody he was committed, at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.

2. Upon the undertaking and the certificate of the officer, the court in which the indictment or the appeal, as the case may be, is pending, may, upon a notice of five days to the district attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated; and on filing the order and the papers used on the application, the bail is exonerated accordingly.

New.

Tompkins v. Mayor (1897), 14 App. Div. 540; 43 N. Y. Supp. 878; People v. Mahoney, 89 N. Y. Supp. 426.

§ 591. By whom, when and where, defendant may be arrested for the purpose of a surrender.

For the purpose of surrendering the defendant, any surety, at any time before he is finally charged, and at any place within the state, may himself arrest him, or by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

New.

§ 592. On surrender before forfeiture, money deposited to be refunded.

If money have been deposited instead of bail, and the defendant at any time before the forfeiture thereof surrender himself to the officer to whom the commitment was directed, in the manner provided in section five hundred and ninety, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

New.

Tompkins v. Mayor (1897), 14 App. Div. 540, 43 N. Y. Supp. 878; McShane v. Pinkham (1892), 46 St. Rep. 66, 19 N. Y. Supp. 969.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL, OR OF THE DEPOSIT OF MONEY.

SECTION 593. In what cases, and how ordered.
594. When and how forfeiture may be discharged.
595. Forfeiture of bail, to be enforced by action.
596. Deposit of money, when forfeited; how disposed of.
597. Remission of forfeiture.
598. Application therefor, how made and on what terms granted.

§ 593. In what cases, and how ordered.

If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion where his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes; and the undertaking of his bail, or the money deposited, instead of bail, as the case may be, is thereupon forfeited.

New.

People v. Bennett (1893), 136 N. Y. 482, 137 N. Y. 601, 49 St. Rep. 909; Matter of Cornell (1893), 50 St. Rep. 927.

§ 594. When and how forfeiture may be discharged.

If, at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or deposit to be discharged, upon such terms as are just.

New.

People v. Bennett (1893), 49 St. Rep. 909.

§ 595. Forfeiture of bail, to be enforced by action.

If the forfeiture be not discharged, as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed against any surety upon his undertaking. Such proceeding shall be by action only, except in the county of New York, where it shall be in the method now prescribed by special statute, and in the counties of Kings and Erie,

where all recognizances given to answer to a charge preferred, or for good behavior, or to appear and testify in all cases cognizable before any court of criminal jurisdiction, on being forfeited, shall be filed by the district attorney, together with a certified copy of the order of the court forfeiting the same, in the office of the clerk of the said county of Kings or Erie as the case may be, and thereupon the said clerk shall docket the same in the book kept by him for docketing of judgments, transcripts whereof are filed with him as such clerk, as if the same was the transcript of a judgment record for the amount of the penalty, and the recognizance, and the certified copy of the order forfeiting the recognizance, shall be the judgment record; such judgment shall, in good faith, be a lien on the real estate of the persons entering into such recognizance, from the estate of the persons entering into such recognizance, from the time of filing said recognizance and copy of order and docketing the same, as in this section directed; an execution may be issued to collect the amount of said recognizance, in the same form as upon a judgment recovered in any court of record in said county of Kings or Erie as the case may be, in an action of debt, in favor of the people against the persons entering into such recognizance. (Amended by L. 1909, chs. 119 and 590. In effect Sept. 1. 1909.)

New.

People v. Bennett (1898), 49 St. Rep. 909.

§ 596. Deposit of money when forfeited, how disposed of.

If, by reason of the neglect of the defendant to appear, as provided in section five hundred and ninety-three, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in sections five hundred and ninety-four and five hundred and ninety-seven, the county treasurer with whom it is deposited may, at any time after the final adjournment of the court, apply the money deposited to the use of the county.

New.

Sutherland v. St. Lawrence County (1905), 101 App. Div. 305, 91 N. Y. Supp. 962.

§ 597. Remission of forfeiture.

After the forfeiture of the undertaking or deposit, as provided in this article, the court directing the forfeiture, the county court of the county, or in the city of New York, the supreme court

may remit the forfeiture or any part thereof, upon such terms as are just. (Amended by L. 1895, ch. 880.)

New.

Lyman v. Perlmutter (1901), 166 N. Y. 413; People v. Nooney (1892), 64 Hun 171, 19 N. Y. Supp. 134; People v. Young (1895), 92 Hun 375, 36 N. Y. Supp. 547; People v. Street (1891), 14 N. Y. Supp. 773; People v. Spear (1883), 1 Crim. Rep. 540; Matter of Sayles, (1903), 84 App. Div. 211, 82 N. Y. Supp. 671, rev'g 40 Misc. 135; Matter of Leano (1908), 60 Misc. 520.

§ 598. Application therefor, how made and on what terms granted.

The application must be upon at least five days' notice to the district attorney of the county served with copies of the affidavits and papers on which it is founded, and can be granted only upon payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture. (Amended by L. 1882, ch. 360.)

New.

People v. Nooney (1892), 64 Hun 171, 19 N. Y. Supp. 134; People v. Young (1895), 92 Hun 375, 36 N. Y. Supp. 547; Matter of Sayles (1903), 84 App. Div. 211, 82 N. Y. Supp. 671, rev'g 40 Misc. 135; People v. Leano (1908), 60 Misc. 520.

ARTICLE VIII.

RE-COMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL, OR DEPOSITED MONEY INSTEAD OF BAIL.

SECTION 599. In what cases.
600. Contents of the order.
601. Defendant may be arrested in any county.
602. If for failure to appear for judgment, defendant must be committed.
603. If for other cause, he may be admitted to bail.
604. Bail in such case, by whom taken.
605. Form of the undertaking.
606. Qualifications of bail, and how put in.

§ 599. In what cases.

The court to which the committing magistrate returns the deposition and statement, or in which an indictment or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, or if the court be not in session, any judge thereof may direct the arrest of the defendant, and his commitment to the officer to whose custody he was committed at the time he was admitted to bail, and his detention until legally discharged, in the following cases.

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section five hundred and ninety-three;

2. When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the state;

3. Upon an indictment being found, in the cases provided in section three hundred and six. (Amended by L. 1882, ch. 360.)

New.

§ 600. Contents of the order.

The order for the recommitment of the defendant must recite, *generally, the facts* upon which it is founded, and direct that the

defendant be arrested by any sheriff, constable, marshal or policeman in this state, and committed to the officer to whose custody he was committed, at the time he was admitted to bail, to be detained until legally discharged.

Derivation: L. 1879, ch. 59.

§ 601. Defendant may be arrested in any county.

The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest; except, that when arrested in another county, the order need not be indorsed by a magistrate of that county.

New.

§ 602. If for failure to appear for judgment, defendant must be committed.

If the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

New.

§ 603. If for other cause, he may be admitted to bail.

If the order be made for any other cause, and the crime be bailable, the court may fix the amount of bail, and may direct in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

New.

§ 604. Bail in such case, by whom taken.

When the defendant is admitted to bail, the bail may be taken by any magistrate in the county, having authority, in a similar case, to admit to bail upon the holding of the defendant to answer before indictment, as prescribed in sections five hundred and fifty-seven and five hundred and fifty-eight, or by any other magistrate to be designated by the court.

New.

§ 605. Form of the undertaking.

When bail is taken upon the recommitment of the defendant,

the undertaking of bail must be in substantially the following form:

"An order having been made on the day of , eighteen hundred and , by the court of [naming the court], that A. B. be admitted to bail in the sum of dollars, in an action pending in that court against him in behalf of the people of the state of New York, upon an [information, presentment, indictment or appeal, as the case may be].

"We, A. B., defendant, [if the defendant join in the undertaking], and C. D., surety of [stating his place of residence and occupation], and E. F., surety of [stating his place of residence and occupation], hereby, jointly and severally, undertake that the above-named A. B. shall appear in that or any other court in which his appearance may be lawfully required, upon that [information, presentment, indictment or appeal, as the case may be], and shall at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars" [inserting the sum in which the defendant is admitted to bail]. Amended by L. 1882, ch. 360.)

New in form.

§ 606. Qualifications of bail, and how put in.

The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed by sections five hundred and sixty-nine to five hundred and seventy-seven, inclusive.

New.

CHAPTER II.

COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION 607. Subpoena defined.
608. Magistrate may issue subpoenas, on information or presentment.
609. District attorney may issue subpoenas for witnesses before grand jury.
610. He may also issue subpoenas for the people, on trial of an indictment.
610a. Attendance of witnesses for people when trial postponed.
611. Clerk may issue blank subpoenas for witnesses for defendant on trial.
611a. General regulations concerning subpoenas.
612. Form of subpoena.
613. Requirement in subpoena, to produce books, papers and documents.
614. Subpoena, by whom served.
615. How served.
615a. Subpoenaing witnesses in another county.
616. Fees of witnesses in behalf of the people.
617. Fees of defendant's witnesses.
618. Witnesses residing or served with subpoena out of the county, when and how compelled to attend.
618a. Subpoena of witness to testify in criminal actions without the state.
618b. Judge may order witness to enter into an undertaking for appearance, etc.
619. Disobedience to subpoena, or refusal to be sworn or to testify; how punished.
619a. Punishment of witness for default in appearing pursuant to recognizance.
619b. Mileage fees for subpoena service.

§ 607. Subpoena defined.

The process by which the attendance of a witness before a court or magistrate is required is a subpoena.

New.

People ex rel. Drake v. Andrews (1909), 134 App. Div. 32, 37.

§ 608. Magistrate may issue subpoenas for witnesses before grand jury.

A magistrate, before whom an information is laid, may issue subpoenas, subscribed by him, for witnesses within the state, either on behalf of the people or of the defendant.

New.

People ex rel. Livingston v. Wyatt (1906), 186 N. Y. 390; People ex rel. Fleming v. Mayer (1906), 41 Misc. 289, 84 N. Y. Supp. 71.

§ 609. District attorney may issue subpoenas for witnesses before grand jury.

The district attorney of the county may issue subpoenas, subscribed by him for witnesses within the state, in support of the prosecution or for such other witnesses as the grand jury may direct, to appear before the grand jury, upon an investigation pending before them.

Derivation: 4 R. S. 725 § 82.

People ex rel. Flood v. Gardiner (1898), 33 App. Div. 205, 53 N. Y. Supp. 451; People ex rel. Larkin v. Hull (1898), 23 Misc. 64, 50 N. Y. Supp. 468; People ex rel. Hummel v. Davy (1905), 105 App. Div. 598, 602, 94 N. Y. Supp. 1087; People ex rel. Lewisohn v. Wyatt (1902), 39 Misc. 456, 80 N. Y. Supp. 198.

Matter of Osborne (1909), 62 Misc. 575, 578, 584, 117 N. Y. Supp. 169; People ex rel. Drake v. Andrews (1909), 134 App. Div. 32, 36.

§ 610. He may also issue subpoenas for the people, on trial of an indictment.

The district attorney may, in like manner, issue subpoenas subscribed by him, for witnesses within the state in support of an indictment, to appear before the court at which it is to be tried.

Derivation: 4 R. S. 729, § 63.

People ex rel. Flood v. Gardiner (1898), 33 App. Div. 205, 53 N. Y. Supp. 451.

§ 610-a. Attendance of witnesses for people when trial postponed.

Whenever the trial of an indictment shall be postponed by the court in which the same shall be pending, it shall be the duty of the district attorney to cause all the witnesses on the part of the people in attendance, deemed by him material, to be recognized to appear at the time and place to which such trial shall have been postponed. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1845, ch. 180, § 19.

§ 611. Clerk may issue blank subpoenas for witnesses for defendant, on trial.

The clerk of the court at which an indictment is to be tried, must at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, under the seal of the court and subscribed by him as clerk, for witnesses within the state, as may be required by the defendant.

Derivation: 4 R. S. 729, § 59.

§ 611-a. General regulations concerning subpoenas.

Whenever any magistrate shall issue any subpœna in any criminal proceeding or trial, he shall endorse upon the back thereof a memorandum showing whether the same was issued for the people or for the prisoner; and every officer or other person who shall insert the names of witnesses in a subpœna issued for the people, intended for the prisoner, with intent thereby to deceive any person, or to obtain any pay as for services in subpœnaing witnesses for the people, shall be deemed guilty of a misdemeanor; and no such magistrate shall charge or be allowed for more than six subpœnas in any one criminal case, nor shall any board of supervisors allow any charge for issuing or serving any subpœna in any criminal case or proceeding issued or served on behalf of a defendant. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1845, ch. 180, § 18.

§ 612. Form of subpoena.

A subpœna authorized by the last four sections, must be substantially in the following form:

"In the name of the people of the state of New York:

To A. B.

"You are commanded to appear before C. D., a justice of the peace of the town of , [or "the grand jury of the county of ," or "the county court of the county of ," or as the case may be,] at [naming the place,] on [stating the day and hour,] as a witness in a criminal action prosecuted by the people of the state of New York, against E. F.

"Dated at the town of , [as the case may be,] the day of , 18 .

"G. H., justice of the peace," [or "I. K., district attorney," or "By order of the court, L. M., clerk," as the case may be.] (Amended by L. 1895, ch. 880.)

New in form.

Matter of Osborne (1909), 62 Misc. 575, 584, 117 N. Y. Supp. 169.

§ 613. Requirement in subpoena, to produce books, papers and documents.

If chattels, books, papers or documents be required, a direction to the following effect must be contained in the subpœna: "And you are required also to bring with you the following,"

[describing intelligibly the chattels, books, papers or documents required.] (Amended by L. 1897, ch. 547.)

New.

People v. Van Tassell (1892), 64 Hun 449, 19 N. Y. Supp. 644, 17 N. Y. Supp. 941; People ex rel. Drake v. Andrews (1909), 134 App. Div. 82, 86.

§ 614. Subpoena, by whom served.

A peace officer must serve, in his county, city, town or village, as the case may be, any subpœna delivered to him for service either on the part of the people or of the defendant; and must make a written return of the service, subscribed by him, stating the time and place of service, without delay. The subpœna may, however, be served by any other person.

New.

People ex rel. Flood v. Gardiner (1898), 157 N. Y. 528, 88 App. Div. 205, 58 N. Y. Supp. 451; People ex rel. Drake v. Andrews (1909), 134 App. Div. 82, 87.

§ 615. How served.

A subpœna is served by delivering it, or by showing it, and delivering a copy thereof, to the witness personally.

New.

§ 615-a. Subpoenaing witnesses in another county.

Whenever it shall become necessary to send subpœnas into another county for witnesses on criminal process, the district attorney is hereby empowered to send them to the sheriff of the county in which the said witnesses reside, whose duty it shall be to serve the same, and make his return without delay to such district attorney. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1886, ch. 506, § 4.

§ 616. Fees of witnesses in behalf of the people.

A witness in behalf of the people in a criminal action in a court of record is entitled to the same fees and mileage as a witness in a civil action in the same court, payable by the treasurer of the county upon the certificate of the clerk of the court, stating the number of days the witness actually attended and the number of miles traveled by him in order to attend. Such certificates shall only be issued by the clerk upon the production of the affidavit of the witness, stating that he attended as such *either* on subpœna or request of the district attorney, the num-

ber of miles necessarily traveled and the duration of attendance. An officer in any state department who attends as a witness under this section in his official capacity, or in consequence of an official action taken by him, and who receives a fixed sum in lieu of expenses, or who is entitled to receive the actual expenses incurred by him in the discharge of his official duties, is not entitled to the compensation herein provided. (Amended by L. 1895, ch. 98.)

Derivation: 4 R. S. 753, § 13; L. 1869, ch. 155, §§ 1, 2; L. 1848, ch. 59.

People ex rel. Troy v. Pettit (1897), 19 Misc. 280, 44 N. Y. Supp. 256; People ex rel. Larkin v. Hull (1898), 23 Misc. 64, 50 N. Y. Supp. 468.

§ 617. Fees of defendant's witnesses.

In any such action, the court may also, in its discretion, by order, direct the county treasurer to pay a reasonable sum, to be specified in the order, to any witness attending in behalf of the defendant, not exceeding the amount payable to a witness in a civil action in the same court. Upon the production of the order or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury. (Amended by L. 1895, ch. 98.)

Derivation: Same as § 616.

§ 618. Witnesses residing or served with subpœna, out of the county, when and how compelled to attend.

A person served with a subpœna, issued by any officer of any court of record of this State, a district attorney or a county clerk, must attend in obedience to the subpœna, at the time and place and before the court therein named, within any county of this State. No person is obliged to attend as a witness upon a subpœna, issued by any person or court other than a judge of a court of record, a court of record, a district attorney, or a county clerk, out of the county where the witness resides or is served with the subpœna, unless the county judge of the county where such subpœna is returnable, a justice of the supreme court, or a court of record, upon an affidavit of the prosecutor or district attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness is material, and his attendance at the trial or examination necessary, shall indorse on the subpœna an order for the attendance of the witness. (Amended by L. 1895, ch. 794.)

New.

§ 618-a. Subpoena of witnesses to testify in criminal actions without the state.

If a judge of a court of record in any state bordering on this state which by its laws has heretofore made provision for commanding persons within its borders to attend and testify in criminal actions in this state, certifies under the seal of such court that there is a criminal action pending in such court, wherein the defendant is charged with a crime of the grade of a felony, and that a person residing or being within this state is believed to be a material and necessary witness in such action, a judge of a court of record in this state, upon the presentation of such certificate and such proof of the materiality and necessity of such witness as he may require, opportunity being given such witness to appear before such judge and be heard in opposition thereto, and upon request so to do by the clerk of the court issuing such certificate, shall issue and attach to such certificate a subpœna commanding such witness to appear and testify in the court where such criminal action is pending at the time and place to be stated therein. If any person on whom such subpœna has been served in the manner provided by this chapter, having been tendered by the party asking for the subpœna the sum of ten cents for each mile to be traveled to and from such court, and the sum of five dollars for each day that his attendance is required, the number of days to be specified in the subpœna, shall unreasonably neglect to attend and testify at such court, he shall be punished in the manner provided for the punishment of disobedience of any other subpœna issued from a clerk of a court of record in this state, provided, however, that the laws of the state in which the trial is to be held gives to persons coming in the state under such subpœna, protection from the service of papers and arrest. (Added by L. 1902, ch. 94. In effect March 6, 1902.)

Derivation: L. 1902, chap. 94.

§ 618-b. Judge may order witness to enter into an undertaking for appearance or be committed on refusal to comply therewith.

Whenever a judge of a court of record in this state is satisfied, by proof on oath, that a person residing or being in this state is

a necessary and material witness for the people in a criminal action or proceeding pending in any of the courts of this state, he may, after an opportunity has been given to such person to appear before such judge and be heard in opposition thereto, order such person to enter into a written undertaking, with such sureties and in such sum as he may deem proper, to the effect that he will appear and testify at the court in which such action or proceeding may be heard or tried, and upon his neglect or refusal to comply with the order for that purpose, the judge must commit him to such place, other than a state prison, as he may deem proper, until he comply or be legally discharged. (Added by L. 1904, ch. 437. In effect May 17, 1904.)

Derivation: L. 1904, chap. 437.

§ 619. Disobedience to subpoena, or refusal to be sworn or to testify, how punished.

Disobedience to a subpœna, or a refusal to be sworn or to testify, may be punished by the court or magistrate as for a criminal contempt, in the manner provided in the judiciary law. (Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

New.

People v. Shark (1887), 45 Hun 493, rev'd 107 N. Y. 427, 5 Crim. Rep. 465; People ex rel. Webster v. Van Tassell (1892), 64 Hun 450, 19 N. Y. Supp. 644; People v. Hannah (1895), 92 Hun 477, 37 N. Y. Supp. 702; People ex rel. Taylor v. Larbes (1894), 62 St. Rep. 176; People ex rel. Munsell v. Oyer, etc. (1885), 3 Crim. Rep. 216; People ex rel. Lewisohn v. Wyatt (1903), 81 App. Div. 56, 80 N. Y. Supp. 816; People ex rel. Drake v. Andrews (1909), 197 N. Y. 53.

§ 619-a. Punishment of witness for default in appearing pursuant to recognizance.

The court before which any witness on the part of the people in a criminal prosecution shall have been recognized to appear, by recognizance taken before a magistrate or a court of record having criminal jurisdiction, may proceed against such witness for any default in appearing, pursuant to the condition of his recognizance, by process of attachment, in the same manner and with like proceedings thereon, as if such witness had failed to appear in obedience to a subpœna; and the recognizance of such witness, filed with the clerk or the court, if taken before a magistrate, or the record of the recognizance, if taken before a court of record, and the entry in the minutes of the clerk of the court of

the default of such witness, shall be sufficient evidence for issuing such process of attachment. No district attorney shall receive any fee for issuing a subpœna for the appearance of any witness who shall have been recognized to appear in the same prosecution and at the same court designated in such subpœna. The issuing of an attachment against a witness pursuant to this section, shall not be a bar to the prosecution of his recognizance. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1845, ch. 180, § 20.

§ 619-b. Mileage fees for subpoena service.

Whenever a subpœna for witnesses in criminal cases or complaints, containing one or more names, shall be served by a constable or other officer, such officer shall be allowed for mileage only for the distance, going and returning, actually travelled to make such service upon all the witnesses in such case of complaint, and not separate mileage for each witness, unless the board of supervisors auditing accounts for such services shall deem it equitable to make a further allowance. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1886, ch. 506, § 1.

CHAPTER III.

EXAMINATION OF WITNESSES, CONDITIONALLY.

SECTION 620. Witnesses to be examined conditionally for the defendant, as provided in this chapter.
621. In what cases defendant may apply for order.
622. Application, on what facts to be founded.
623. If during term, to be made to the court.
624. If not during term, to whom to be made.
625. The order, when granted and what to contain.
626. If made by the court, may direct examination before a judge or magistrate; if made by a judge, examination to be before him.
627. On proof of service, if district attorney absent, examination to proceed.
628. If facts on which order was founded, be disproved, examination not to proceed.
629. Testimony, how taken and authenticated.
630. Deposition, how, by whom and when filed.
631. When it may be read in evidence.
632. When to be excluded.
633. On reading the deposition, on trial, what objections may be taken.
634. Attendance of witness for examination, how compelled.
635. Disobedience of witness, how punished.

§ 620. Witnesses to be examined conditionally for the defendant, as provided in this chapter.

When a defendant has been held to answer a charge of a crime, he may, either before or after indictment, have witnesses examined conditionally on his behalf, as prescribed in this chapter, and not otherwise.

Derivation: 4 R. S. 731, § 75, 3 R. S. 891, § 1.
People v. Guidici (1885), 100 N. Y. 503, 3 Crim. Rep. 557.

§ 621. In what cases defendant may apply for order.

When a material witness for the defendant is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Derivation: 3 R. S. 891, § 2.

§ 622. Application, on what facts to be founded.

The application must be made upon affidavit showing:

1. The nature of the crime charged;

2. The state of the proceedings in the action;

3. The name and residence of the witness, and that his testimony is material to the defense of the action; and,

4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial.

Derivation: 4 R. S. 731 § 75, 3 R. S. 391, § 2.

§ 623. If during term, to be made to the court.

The application, if made during the term, must be made to the court.

Derivation: Same as § 622.

§ 624. If not during term, to whom to be made.

If not made during the term, it may be made as follows:

1. When the indictment is pending in the supreme court, or in a county court other than in the city of New York, to a justice of the supreme court, or to the county judge;

2. When the indictment is pending in the court of general sessions of the city of New York, to the recorder or city judge or judge of general sessions, or one of the judges of the supreme court in that city;

3. When the indictment is pending in a city court, to the recorder or city judge of the city in which it is pending. (Amended by L. 1895, ch. 880.)

Derivation: Same as §§, 622, 623.

§ 625. The order, when granted and what to contain.

If the court or officer be satisfied, that the examination of the witness is necessary to the attainment of justice, an order must be made, that the witness be examined conditionally, at a specified time and place, and that a copy of the order, and of the affidavit on which it was granted, be served on the district attorney, within a specified time before that fixed for the examination.

Derivation: 3 R. S. 392, § 3.

§ 626. If made by the court, may direct examination before a judge or magistrate.

If the order be made by the court, it may direct that the examination be taken before a judge thereof, or before a magistrate in the county, to be named in the order. If made by any of the officers mentioned in section six hundred and twenty-four, it must direct the examination to be taken before him.

Derivation: Same as § 625.

§ 627. On proof of service, if district attorney absent, examination to proceed.

On proof being furnished to the officer before whom the examination is appointed, of the service upon the district attorney, of a copy of the order, and of the affidavit on which it was granted, if no counsel appear on the part of the people, the examination must proceed.

Derivation: 3 R. S. 392, § 5.

§ 628. If facts on which order was founded be disproved, examination not to proceed.

If the district attorney or other counsel appear on the part of the people, and it be shown to the satisfaction of the court or officer, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

Derivation: 3 R. S. 392, § 4.

§ 629. Testimony, how taken and authenticated.

The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information, as prescribed in section two hundred.

Derivation: 3 R. S. 392, § 6.

§ 630. Deposition, how, and by whom and when filed.

The deposition must be retained by the officer taking it, and filed by him in the office of the clerk of the court without unnecessary delay.

Derivation: Same as § 629.

§ 631. When it may be read in evidence.

The deposition, or a certified copy thereof, may be read in evidence by either party on trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state.

Derivation: 3 R. S. 892, § 7.

§ 632. When to be excluded.

The deposition cannot, however, be read if it appear that the copy of the order and of the affidavit on which it was founded was not served on the district attorney, as directed, or that the examination was in any respect unfair or not conducted as prescribed in this chapter.

Derivation: 3 R. S. 893, § 8.

§ 633. On reading the deposition, on trial, what objections may be taken.

Upon the reading of the deposition in evidence, the same objections may be taken to a question or answer contained therein, as if the witness had been examined orally in court.

Derivation: 3 R. S. 893, § 9.
People v. Guidici (1885), 100 N. Y. 503, 3 Crim. Rep. 557.

§ 634. Attendance of witness for examination, how compelled.

The attendance of the witness may be enforced, by a subpœna subscribed by the officer, or issued under the seal of the court.

Derivation: 3 R. S. 893, § 10.

§ 635. Disobedience of witness, how punished.

Disobedience to the subpœna, or a refusal to be sworn or to testify, may be punished by the court or officer, as prescribed in section six hundred and nineteen.

Derivation: Same as § 634.
People v. Sharp (1887), 45 Hun 493, 5 Crim. Rep. 465; People v. Guidici (1885), 3 Crim. Rep. 557, 100 N. Y. 503.

CHAPTER IV.

EXAMINATION OF WITNESSES ON COMMISSION.

SECTION 636. Witness residing out of the state, to be examined for defendant, as provided in this chapter
637. In what cases defendant may apply for order to examine witnesses on commission.
638. Commission, defined.
639. Application for commission, on what facts to be founded.
640. If during term, to be made to the court.
641. If not during term, to whom to be made.
642. Notice of application, when required and how given.
643. Order for commission, when granted.
644. Trial to be stayed until execution and return of commission.
645. Interrogatories, and notice of settlement.
646. Cross-interrogatories, and notice of settlement.
647, 648. What may be inserted in interrogatories.
649. Direction as to return of commission.
650. Commission, how executed.
651. Copy of last section to be annexed to commission.
652, 653. Commission, how returned, when delivered to agent for that purpose.
654. When and how filed.
655. Commission returned by mail, how disposed of.
656. Commission and return to be open for inspection, and copies to be furnished.
657. Deposition to be read in evidence; what objections may be taken thereto.

§ 636. Witness residing out of the state, to be examined for defendant, as provided in this chapter.

When an issue of fact is joined upon an indictment, the defendant may have any material witness residing out of the state, examined in his behalf, as prescribed in this chapter, and not otherwise.

Derivation: 4 R. S. 731, § 73, 3 id. 893, § 11.
People v. Bromwich (1909), 135 App. Div. 67, 74.

§ 637. In what cases defendant may apply for order to examine witnesses on commission.

When a material witness for the defendant resides out of the

state, the defendant may apply for an order that the witness be examined on a commission.

Derivation: Same as § 686.

§ 638. Commission defined.

A commission is a process issued under the seal of the court and the signature of the clerk, directed to one or more persons, designated as commissioners, authorizing them to examine the witness upon oath, on interrogatories annexed thereto, and to take and return the deposition of the witness, according to the directions given with the commission.

New.

§ 639. Application for commission, on what facts to be founded.

The application must be made upon affidavit, showing:

1. The nature of the crime charged;

2. The state of the proceedings in the action, and that issue of fact has been joined therein;

3. The name of the witness, and that his testimony is material to the defense of the action;

4. That the witness resides out of the state.

New.

People v. Haight (1888), 8 Crim. Rep. 62.

§ 640. If during term, to be made to the court.

The application, if made during the term, must be made to the court.

Derivation: 3 R. S. 898, §§ 12, 13.

§ 641. If not during term, to whom to be made.

If not made during the term, the application may be made as follows:

1. When the indictment is pending in the supreme court, or, except in the city and county of New York, in a county court to a justice of the supreme court or to the county judge.

2. When the indictment is pending in the court of general sessions in the city and county of New York, to the recorder or city judge or judge of general sessions, or one of the justices of the supreme court in that city.

3. When the indictment is pending in a city court, to the

recorder or judge of the court in which it is pending. (Amended by L. 1895, ch. 880.)

New.

§ 642. Notice of application, when required and how given.

If the application be made to the court, it may be without notice to the district attorney, unless the court direct notice to be given, in which case it must prescribe the manner of giving the same. If made to one of the officers mentioned in the last section, the application must be upon five days' notice to the district attorney served, with a copy of the affidavit upon which it is founded. (Amended by L. 1882, ch. 360.)

New.

§ 643. Order for commission, when granted.

If the court or officer to whom the application is made be satisfied that the witness resides out of the state, and that his examination is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and that the people be permitted to join in the commission, and to examine witnesses in support of the indictment.

Derivation: 4 R. S. 731, § 73.

People v. Haight (1883), 3 Crim. Rep. 62; People v. Goodman (1904), 43 Misc. 508, 89 N. Y. Supp. 522.

§ 644. Trial to be stayed until execution and return of commission.

If the application for a commission be granted, the court or judge must insert in the order therefor, a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

Derivation: 4 R. S. 731, § 74.

People v. Haight (1883), 3 Crim. Rep. 62.

§ 645. Interrogatories, and notice of settlement.

When the commission is ordered, the defendant must serve upon the district attorney, and the district attorney, if he intend to join in the commission and examine witnesses in support of the indictment, must serve upon the defendant or his counsel, a copy of the interrogatories to be annexed thereto, with a notice of two days of

their settlement, before an officer who might have granted the order out of term, as provided in section six hundred and forty-one.

Derivation: Same as § 644.
People v. Haight (1883), 3 Crim. Rep. 62.

§ 646. Cross-interrogatories, and notice of settlement.

The district attorney, and the defendant, may, in the same manner, serve cross-interrogatories, to be annexed to the commission, with the like notice of the settlement thereof.

Derivation: Same as § 644.

§ 647. What may be inserted in interrogatories.

In the interrogatories, either party may insert any question pertinent to the issue.

Derivation: Same as § 644.
People v. Haight (1883), 3 Crim. Rep. 62.

§ 648. What may be inserted in interrogatories.

Upon the settlement of the interrogatories, the judge must expunge every question not pertinent to the issue, and modify the questions, so as to conform them to the rules of evidence, and when settled, must indorse upon them his allowance, and annex them to the commission.

Derivation: Same as § 644.
People v. Haight (1883), 3 Crim. Rep. 62.

§ 649. Direction as to return of commission.

Unless the parties otherwise consent, by an indorsement upon the commission, the officer must indorse thereon a direction, as to the manner in which it must be returned; and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the indictment is pending, designating his name and the place where his office is kept.

Derivation: 3 S. R. 894, § 15.
People v. Wise (1885), 3 Crim. Rep. 304.

§ 650. Commission, how executed.

The commissioners, or any one of them, unless otherwise specially directed, may execute the commission as follows:

1. They must publicly administer an oath to the witness, that

his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth;

2. They must cause the examination of the witness to be reduced to writing;

3. They must write the answers of the witness, as nearly as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it, until it is made conformable to what he declares the truth.

4. If the witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated;

5. If papers or documents are produced before them, and proved by the witness, they must be annexed to his deposition, and be subscribed by the witness and certified by the commissioners;

6. The commissioners must subscribe their names to each sheet of the deposition, and annex the deposition, with the papers or documents proved by the witness, to the commission, and must close it up under seal and address it, as directed thereon;

7. If there be a direction on the commission, to return it by mail, the commissioners must immediately deposit it in the nearest post-office. If any other direction be made, by the written consent of the parties, or by the officer, on the commission, as to its return, they must comply with the direction.

Derivation: 3 R. S. 894, § 16.

§ 651. Copy of last section to be annexed to commission.

A copy of the last section must be annexed to the commission.

Deriavtion: Same as § 650.

§ 652. Commission, how returned, when delivered to agent for that purpose.

If the commission and return be delivered by the commissioners to an agent, he must deliver it to the clerk to whom it is directed, or to a judge of the court in which the indictment is pending, by whom it may be received and opened, upon the affidavit of the agent that he received it from the hands of one of the commissioners, and that it has not been opened or altered since he received it.

Derivation: 3 R. S. 895, § 17.

§ 653. Commission, how returned, when delivered to agent for that purpose.

If the agent be dead, or from sickness or other casualty, unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty, unable to deliver it, that it has not been opened or altered since the person making the affidavit received it, and that he believes it has not been opened or altered since it came from the hands of the commissioners.

Derivation: 3 R. S. 895, § 18.

§ 654. When and how filed.

The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

Derivation: 3 R. S. 895, § 19.

§ 655. Commission returned by mail, how disposed of.

If the commission and return be transmitted by mail, the clerk to whom it is addressed must open and file it in his office, where it must remain, unless the court otherwise direct.

Derivation: 3 R. S. 895, § 20.

§ 656. Commission and return to be opened for inspection, and copies to be furnished.

The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same, or of any part thereof, on payment of his fees, at the rate of five cents for every hundred words.

Derivation: 3 R. S. 895, § 22. See Code Civ. Pro., § 909.

§ 657. Deposition to be read in evidence; what objections may be taken thereto.

The deposition, taken under the commission, may be read in evidence by either party on the trial, and the same objections may be taken to a question in the interrogatories, or to an answer in the deposition, as if the witness had been examined orally in court.

Derivation: 3 R. S. 896, § 23.

People v. Haight (1883), 3 Crim. Rep. 62.

CHAPTER V.

INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE OR DURING THE TRIAL, OR AFTER CONVICTION.

SECTION 658. Appointment of commission; their proceedings.
659. If found insane, trial or judgment suspended, and defendant to be committed to state lunatic asylum, if his discharge be dangerous to the public peace or safety.
660. If defendant committed, bail exonerated or deposit of money refunded.
661. Detention of defendant in asylum, and proceedings on his becoming sane.
662. Expenses incident to sending defendant to asylum, how paid.
662a. Costs of commission charge upon county.

§ 658. Appointment of commission; their proceedings. When a defendant pleads insanity, as prescribed in section three hundred and thirty-six, the court in which the indictment is pending, instead of proceeding with the trial of the indictment, may appoint a commission of not more than three disinterested persons to examine him and report to the court as to his sanity at the time of the commission of the crime.

The commission must summarily proceed to make their examination. Before commencing they must take the oath prescribed in the Code of Civil Procedure to be taken by referees. They must be attended by the district attorney of the county, and may call and examine witnesses and compel their attendance. The counsel of the defendant may take part in the proceedings. When the commissioners have concluded their examination they must forthwith report the facts to the court with their opinion thereon. (Amended by L. 1910, ch. 557, in effect Sept. 1, 1910.)

Derivation: L. 1871, ch. 666, §§ 1, 2.

People v. McElvaine (1891), 125 N. Y. 596, 36 St. Rep. 181, 8 Crim. Rep. 156;

People ex rel. Mullen v. Coler (1901), 61 App. Div. 589, 70 N. Y. Supp. 639; People v. Taylor (1893), 52 St. Rep. 920; People v. Haight (1883), 3 Crim. Rep. 61; People ex rel. Forrester v. Sheriff of New York County (1906), 114 App. Div. 861, 100 N. Y. Supp. 193; People v. Tobin (1908), 176 N. Y. 284; People ex rel. Peabody v. Chanler (1909), 133 App. Div. 159, 117 N. Y. Supp. 322.

§ 659. If found insane, trial or judgment suspended, and defendant to be committed to state lunatic asylum, if his discharge be dangerous to the public peace or safety.

If the commission find the defendant insane, the trial of judgment must be suspended until he becomes sane; and the court, if it deem his discharge dangerous to the public peace or safety, must order that he be, in the meantime, committed by the sheriff to a state lunatic asylum; and that upon his becoming sane, he be re-delivered by the superintendent of the asylum to the sheriff.

Derivation: Same as § 658.

People ex rel. Mullen v. Coler (1901), 61 App. Div. 589, 70 N. Y. Supp. 639; People v. Rhinelander (1884), 2 Crim. Rep. 336; People v. Haight (1883), 3 Crim. Rep. 61.

§ 660. If defendant committed, bail exonerated or deposit of money refunded.

The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

New.

§ 661. Detention of defendant in asylum, and proceedings on his becoming sane.

If the defendant be received into the asylum, he must be detained there until he becomes sane. When he becomes sane, the superintendent must give a written notice of that fact to a judge of the supreme court of the district in which the asylum is situated. The judge must require the sheriff without delay to bring the defendant from the asylum and place him in the proper custody until he be brought to trial, judgment, or execution as the case may be, or be legally discharged.

Derivation: L. 1874, ch. 446, as amended L. 1875, ch. 574, § 4.

People ex rel. Mullen v. Coler (1901), 61 App. Div. 540, 70 N. Y. Supp. 639; *People v. Haight (1883)*, 3 Crim. Rep. 61.

§ 662. Expenses incident to sending defendant to asylum, how paid.

The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are, in the first instance, chargeable to the county from which he was sent; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county, bound to provide for and maintain him elsewhere.

Derivation: L. 1874, ch. 446, Tit 1, Art 2, § 82.

§ 662-a. Costs of commission charge upon the county.

The costs of any commission of lunacy, pursuant to the provisions of this article, shall be a charge upon the county in which the commission shall have been executed. The commissioners are entitled to such compensation for their services as the court may direct. (Added by L. 1903, ch. 129. In effect Sept. 1, 1903.)

Derivation: L. 1903, ch. 129.

CHAPTER VI.

COMPROMISING CERTAIN CRIMES, BY LEAVE OF THE COURT.

SECTION 663. Certain crimes, for which the party injured has a civil action, may be compromised.
664. Compromise to be by permission of the court; order thereon.
665. Order, a bar to another prosecution.
666. No public offense to be compromised, except as provided in this chapter.

§ 663. Certain crimes for which the party injured has a civil action, may be compromised.

When a defendant is brought before a magistrate or is held to answer, on a charge of a misdemeanor, for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in the next section, except when it was committed,

1. By or upon an officer of justice, while in the execution of the duties of his office;

2. Riotously; or

3. With an intent to commit a felony. (Amended by L. 1884, ch. 63.)

Derivation: 4 R. S. 730, §§ 66, 69.

Cleaveland v. Cromwell (1905), 110 App. Div. 82, 87, 96 N. Y. Supp. 475; Matter of Hart (1909), 131 App. Div. 661, 673, 116 N. Y. Supp. 198.

§ 664. Compromise to be by permission of the court; order thereon.

If a party injured appear before the magistrate, or before the court to which the deposition and statements are required, by section two hundred and twenty-one, to be returned at any time before trial or commitment by the magistrate, or trial on indictment for the crime, and acknowledge in writing that he has received satisfaction for the injury, the magistrate or court may, in his or its discretion, on payment of the costs and expenses incurred, if such magistrate or court shall see fit so to direct, order all proceedings to be stayed upon the prosecution and the defendant be dis-

charged therefrom. But in that case, the reason for the order must be set forth therein and entered upon the minutes. (Amended by L. 1884, ch. 63.)

Derivation: Same as § 668.

Cleaveland v. Cromwell (1905), 110 App. Div. 82, 87, 96 N. Y. Supp 475; Matter of Hart (1909), 131 App. Div. 661, 673, 116 N. Y. Supp. 198.

§ 665. Order a bar to another prosecution.

The order authorized by the last section is a bar to another prosecution for the same offense.

Derivation: 4 R. S. 730, § 68.

§ 666. No public offense to be compromised, except as provided in this chapter.

No crime can be compromised, nor can any proceeding for the prosecution or punishment thereof upon a compromise be stayed, except as provided in sections six hundred and sixty-three and six hundred and sixty-four.

New.

Matter of Hart (1909), 131 App. Div. 661, 673, 116 N. Y. Supp. 198.

CHAPTER VII.

DISMISSAL OF THE ACTION, BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

SECTION 667. Dismissal, when a person held to answer is not indicted at the next term thereafter.
668. When a person indicted is not brought to trial at the next term thereafter.
669. Court may order action to be continued, and in the meantime discharge defendant from custody, on his own undertaking, or on bail.
670. If action dismissed, defendant to be discharged from custody, or his bail exonerated, or deposit of money refunded.
671. Court may order indictment to be dismissed.
672. *Nolle prosequi* abolished; no indictment to be dismissed or abandoned, except according to this chapter.
673. Dismissal, a bar, in misdemeanor, but not in felony.

§ 667. Dismissal, when a person held to answer is not indicted at the next term thereafter.

When a person has been held to answer for a crime, if an indictment be not found against him, at the next term of the court at which he is held to answer, the court may, on application of the defendant, order the prosecution to be dismissed, unless good cause to the contrary be shown.

Derivation: 4 R. S. 747, § 88.

§ 668. When a person indicted is not brought to trial at the next term thereafter.

If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found the court may, on application of the defendant, order the indictment to be dismissed, unless good cause to the contrary be shown.

Derivation: 4 R. S. 737, §§ 28, 29.

People v. Beckwith (1884), 2 Crim. Rep. 31; People v. Lewis (1906), 111 App. Div. 559, 98 N. Y. Supp. 83; People v. Martin No. 1 (1904), 99 App. Div. 372, 91 N. Y. Supp. 486; People v. Steinhardt (1905), 47 Misc. 252, 258, 98 N. Y. Supp. 1026.

§ 669. Court may order action to be continued, and in the meantime discharge defendant from custody, on his own undertaking, or on bail.

If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

Derivation: 4 R. S. 737, § 30.

Smith v. Bell & Fyfe Foundry Co. (1908), 127 App. Div. 280.

§ 670. If action dismissed, defendant to be discharged from custody, or his bail exonerated, or deposit of money refunded.

If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

New.

§ 671. Court may order indictment to be dismissed.

The court may, either of its own motion, or upon the application of the district attorney, and in furtherance of justice, order an action, after indictment, to be dismissed.

New.

People v. Glen (1901), 64 App. Div. 174, 71 N. Y. Supp. 898, 178 N. Y. 595; People v. Brickner (1891), 15 N. Y. Supp. 530; People v. Beckwith (1884), 2 Crim. Rep. 31; People v. Vaughan (1897), 19 Misc. 299, 42 N. Y. Supp. 959; People v. Kurminsky (1898), 23 Misc. 506, 52 N. Y. Supp. 609; People v. Willis (1898), 23 Misc. 570, 52 N. Y. Supp. 808; People v. Winant (1898), 24 Misc. 362, 53 N. Y. Supp. 695; Matter of Gardiner (1900), 31 Misc. 371, 64 N. Y. Supp. 760; People v. Thomas (1900), 32 Misc. 174, 66 N. Y. Supp. 191; People v. Stern (1900), 33 Misc. 457, 68 N. Y. Supp. 732; People v. Spolasco (1900), 33 Misc. 531, 68 N. Y. Supp. 924; People v. Acritelli (1908), 57 Misc. 580, 110 N. Y. Supp. 430.

§ 672. Nolle prosequi abolished; no indictment to be dismissed or abandoned except according to this chapter.

The entry of a *nolle prosequi* is abolished; and neither the attorney-general, nor the district attorney, can discontinue or abandon a prosecution for a crime, except as provided in the last section.

Derivation: 4 R. S. 728, § 54.

People v. Beckwith (1884), 2 Crim. Rep. 32.

§ 673. Dismissal, a bar in misdemeanor, but not in felony.

An order for the dismissal of the action, as provided in this chapter, is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar, if the offense charged be a felony.

New.

CHAPTER VIII.

REMITTING THE PUNISHMENT IN CERTAIN CASES.

SECTION 674. Punishment, upon conviction of a master of a vessel from a foreign country.

§ 674. Punishment, upon conviction of a master of a vessel from a foreign country.

When the master of a vessel arriving from a foreign country is convicted of having knowingly brought a person convicted therein of a crime, which, if committed in this state, would be a felony, to a place within the state, the court before which the conviction is had may, if satisfied that the defendant has reconveyed the convict to the place from which he took him, and on payment of the costs of prosecution, order the punishment upon the conviction to be remitted.

Derivation: L. 1883, ch. 280, §§ 1, 2.

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

SECTION 675. Summons upon an information or presentment against a corporation, by whom issued, and when returnable.
676. Form of the summons.
677. When and how served.
678. Examination of the charge.
679. Certificate of the magistrate, and return thereof with the depositions.
680. Grand jury may proceed as in the case of a natural person.
681. Bringing an indicted corporation into court.
682. Fine, on conviction, how collected.

§ 675. Summons upon an information or presentment against a corporation, by whom issued, and when returnable.

Upon an information against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons.

Derivation: 4 R. S. 747, §§ 85–87.
People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 676. Form of the summons.

The summons must be in substantially the following form:

"County of *Albany,* [or as the case may be.]

"In the name of the people of the state of New York:

"To the [naming the corporation.]

"You are hereby summoned to appear before me, at [naming the place,] on [specifying the day and hour,] to answer a charge made against you, upon *the information of A. B.,* for [designating the offense, generally.]

"Dated at the *city,* [or 'town,'] of , the day of , 18 .

, "G. H., *Justice of the peace.*"

[Or as the case may be.]

Derivation: Same as § 675, but new in form.
People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 677. When and how served.

The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

Derivation: Same as § 675.
People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 678. Examination of the charge.

At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

Derivation: Same as § 675.
People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 679. Certificate of the magistrate, and return thereof with the depositions.

After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate, in the manner prescribed in section two hundred and twenty-one.

Derivation: Same as § 675.
People ex rel. Laird v. Hannan (1895), 73 St. Rep. 247, 37 N. Y. Supp. 702
People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 680. Grand jury may proceed as in the case of a natural person.

If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer.

Derivation: Same as § 675.
People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 681. Appearance, and plea to indictment, and proceedings thereon.

When an indictment is filed against any corporation, such corporation must be arraigned thereon, and the court acquires jurisdiction over the corporation, in the manner following:

1. The clerk of the court wherein such indictment is found, or to

which it is sent or removed, or the district attorney of the county, must issue a summons signed by him with his name of office, requiring such corporation to appear and answer the indictment by a demurrer or written plea to be verified in like manner as a pleading in a civil action, at a time and place to be specified in such summons, such time to be not less than five days after the issue thereof. The summons may be substantially in the following form:

Supreme court, county of , (state the proper county or court as the case may be)

The People of the State of New York

vs.

The A. B. Company.

You are hereby summoned to appear in this court and, by demurrer or plea in writing duly verified, answer an indictment filed against you by the grand jury of this county, on the day of , charging you with the crime of (designating the offense generally), at a term of the supreme court (or as the case may be) of this county, at (naming the place) on (stating the day and hour) and in case of your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city (or town) of , the day of , 18 .

C. D.,

District Attorney.

(or by order of the court, E. F., Clerk, as the case may be).

2. The summons must be served at least four days before the appearance fixed therein, in the same manner as is provided for the service of a summons upon a corporation in a civil action; and if the corporation does not appear in the manner and at the time and place specified in the summons, judgment must be pronounced against it.

3. Nothing contained in this section shall be construed as preventing the appearance of a corporation by counsel to answer an indictment, without the issuance or service of the summons as above provided. And when an indictment shall have been filed against a corporation it may voluntarily appear and answer the same by counsel duly authorized to so appear for it; in which case the court acquires full jurisdiction over the corporation in the

same manner as if the summons had been issued and served. (Amended by L. 1892, ch. 219; L. 1895, ch. 880.)

Derivation: Same as § 675.

People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

§ 682. Fine, on conviction, how collected.

When a fine is imposed upon a corporation upon conviction, it may be collected in the same manner as a judgment in a civil action, and if an execution issued upon such judgment be returned unsatisfied, the district attorney of the county may thereupon bring an action in the name of the people of the state of New York, to procure a judgment sequestrating the property of the corporation, as provided by the general corporation law. (Amended by L. 1892, ch. 219; L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.

Derivation: Same as § 675.

People v. Equitable Gas Light Co. (1888), 6 Crim. Rep. 190.

CHAPTER X.

ENTITLING AFFIDAVITS.

SECTION 683. Affidavits defectively entitled, valid.

§ 683. Affidavits defectively entitled, valid.

It is not necessary to entitle an affidavit or deposition, in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose, as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or appeal in which it is made.

New.

Kibbe v. Wetmore (1884), 31 Hun 425.

CHAPTER XI.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

SECTION 684. Errors, etc., when not material.

§ 684. Errors, etc., when not material.

Neither a departure from the form or mode prescribed by this Code in respect to any pleadings or proceedings, nor an error or mistake therein, renders it invalid, unless it have actually prejudiced the defendant, or tend to his prejudice in respect to a substantial right.

New.

People v. Bradner (1887), 107 N. Y. 13; People v. Gilman (1891), 125 N. Y. 372, 35 St. Rep. 281; People v. Helmer (1898), 154 N. Y. 600; People v. Lytle (1896), 7 App. Div. 564, 74 St. Rep. 721, 728, 40 N. Y. Supp. 154; People v. Wicks (1896), 11 App. Div. 550, 42 N. Y. Supp. 630; People v. Fletcher (1899), 44 App. Div. 210, 60 N. Y. Supp. 777; People ex rel. Smith v. McFarline (1900), 50 App. Div. 98, 63 N. Y. Supp. 622; People v. Willett (1882), 27 Hun 471; Tillottson v. Martin (1886), 40 Hun 322; People v. Holmes (1886), 41 Hun 57; People v. Marvin (1894), 79 Hun 312, 29 N. Y. Supp. 381; People v. Dimick (1887), 11 St. Rep. 741; People v. Williams (1888), 18 St. Rep. 408, 2 N. Y. Supp. 382; People v. Hagan (1891), 37 St. Rep. 661, 14 N. Y. Supp. 233; Matter of Shrader (1892), 42 St. Rep. 166, 17 N. Y. Supp. 273; People v. Hughes (1892), 16 St. Rep. 415, 19 N. Y. Supp. 550; People v. Laurence (1893), 51 St. Rep. 288; Matter of Wyatt (1894), 61 St. Rep. 312, 30 N. Y. Supp. 275; People v. McKane (1894), 62 St. Rep. 840, 30 N. Y. Supp. 95; Carson v. Desseau (1890), 13 N. Y. Supp. 234; People v. Camp (1891), 17 N. Y. Supp. 397; Kelley v. Gould (1892), 19 N. Y. Supp. 351; People v. Hertz (1901), 35 Misc. 180, 71 N. Y. Supp. 489; People v. Russell (1901), 35 Misc. 767, 72 N. Y. Supp. 1; People v. Stacy (1907), 119 App. Div. 747; People v. Lewis (1906), 111 App. Div. 559, 98 N. Y. Supp. 83; People v. Huggins (1906), 110 App. Div. 613, 615, 97 N. Y. Supp. 187; People v. Torn (1906), 110 App. Div. 676, 678, 97 N. Y. Supp. 523; People v. Foster (1908), 60 Misc. 11; People v. Jones (1909), 129 App. Div. 772, 113 N. Y. Supp. 1097.

CHAPTER XII.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

SECTION 685. When property, alleged to be stolen or embezzled, comes into custody of peace officer.
686. Order for its delivery to owner.
687. When it comes into custody of magistrate, he must deliver it to owner, on proof of title and payment of expenses.
688. Court in which trial is had for stealing or embezzling it, may order it to be delivered to owner.
689. If not claimed in six months, to be delivered to country superintendent of the poor, or in New York, to commissioners of charities and corrections.
690. Receipt for money or property taken from a person arrested for a public offense.
691. Duties of police clerks in the city of New York, etc.

§ 685. When property, alleged to be stolen or embezzled, comes into custody of peace officer.

When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it, subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Derivation: 4 R. S. 746, § 30.
People v. Mills (1904) 178 N. Y. 284.

§ 686. Order for its delivery to owner.

On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, unless its temporary retention be deemed necessary in furtherance of justice, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

Derivation: 4 R. S. 746 § 31.
Tully v. Lewitz (1906), 50 Misc. 353, 98 N. Y. Supp. 829.

§ 687. When it comes into custody of magistrate, he must deliver it to owner on proof of title and payment of expenses.

If property stolen or embezzled come into the custody of a magistrate, it must, unless its temporary retention be deemed necessary in furtherance of justice, be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Derivation: 4 S. R. 746, § 82.
Tully v. Lewitz (1906), 50 Misc. 358, 98 N. Y. Supp. 829.

§ 688. Court in which trial is had for stealing or embezzling it, may order it to be delivered to owner.

If property stolen or embezzled have not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

Derivation: 4 R. S. 747, § 83.
Goetting v. Mormoyle (1908), 191 N. Y. 375.

§ 689. If not claimed in six months, to be delivered to county superintendent of the poor, or, in New York, to commissioners of charities and corrections.

If property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in his custody must, on payment of the necessary expenses incurred in its preservation, deliver it to the county superintendents of the poor, or, in the city of New York, to the commissioners of charities and corrections, to be applied for the benefit of the poor of the county or city, as the case may be.

Derivation: 4 R. S. 747, § 84.
People ex rel. Commissioners v. Steinhart (1908), 57 Misc. 298, 109 N. Y. Supp. 589.

§ 690. Receipt for money or property taken from a person arrested for a public offense.

Except in the city of New York, when money or other property is taken from a defendant, arrested upon a charge of a crime, the officer taking it must, at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of prop-

erty taken; one of which receipts he must deliver to the defendant, and the other of which he must forthwith file with the clerk of the court to which the depositions and statement must be sent, as provided in section two hundred and twenty-one.

New.

§ 691. Duties of police clerks in the city of New York, etc. The commissioners of police of the city of New York may designate some person to take charge of all property alleged to be stolen or embezzled, and which may be brought into the police office, and all property taken from the person of a prisoner, and may prescribe regulations in regard to the duties of the clerk or clerks so designated, and to require and take security for the faithful performance of the duties imposed by this section; and it shall be the duty of every officer into whose possession such property may come to deliver the same forthwith to the person so designated.

New.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS AND PARDONS.

SECTION 692. Power of governor to grant reprieves, commutations and pardons.
693. His power, in respect to convictions for treason; duty of the legislature in such cases.
694. Governor to communicate annually to legislature reprieves, commutations and pardons.
695. Report of case; how and from whom required.
696. Conditional pardon; procedure on violation of.
697. Order to show cause why pardon should not be adjudged void; trial.
698. Idem.

§ 692. Power of governor to grant reprieves, commutations and pardons.

The governor has power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to the regulations provided in this chapter.

Derivation: Const. Art. iv, § 5.

§ 693. His power, in respect to convictions for treason; duty of the legislature in such cases.

He may also suspend the execution of the sentence, upon a conviction for treason, until the case can be reported to the legislature, at its next meeting, when the legislature must either pardon or commute the sentence, direct the execution thereof, or grant a further reprieve.

Derivation: same as § 692.

§ 694. Governor to communicate annually to legislature, reprieves, commutations and pardons.

He must annually communicate to the legislature, each case of reprieve, commutation or pardon; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Derivation: Same as § 692.

§ 695. Report of case; how and from whom required.

When application is made to the governor for a pardon, commutation or reprieve, it shall be the duty of the presiding judge of the court before which the conviction was had, and the district attorney by whom the criminal action was prosecuted, or the district attorney of the county where the conviction was had, holding office at the time of such application, to supply the governor, upon his request therefor, and without delay, with a statement of the facts proved on the trial; or, if a trial was not had, the facts appearing before the grand jury which found the indictment, and of any other facts having reference to the propriety of granting or refusing such pardon, commutation or reprieve. (Amended by L. 1884, ch. 536.)

Derivation: L. 1849, ch. 310, § 1.

Tompkins v. Mayor (1897), 14 App. Div. 588, 43 N. Y. Supp. 878.

§ 696. Conditional pardon; procedure on violation of.

If any person who has been discharged from imprisonment, by virtue of any conditional pardon, or conditional commutation of his sentence, shall violate such condition or neglect to perform it, his pardon or commutation shall be void and he shall be remanded to the place of his former imprisonment and there confined for the unexpired term for which he had been sentenced. When complaint, upon oath, shall be made to a magistrate, that any such person, within his county, has violated or failed to perform the condition of his pardon or commutation, the magistrate shall issue a warrant as provided in chapter two, title three, part four of this act. When the defendant shall have been brought before him, the magistrate, if there is then sitting in his county, any of the courts mentioned in titles three or five of part one of this act, shall remit to it the complaint and deposition, if any, that have been taken before him. If no such court is then in session the magistrate shall proceed to examination of the defendant, in the manner prescribed in chapter seven, title three, part four of this act, and shall either discharge him or shall hold him to answer the charge against him at the next term of such court to be held in the county, and the defendant shall either give bail so to appear and answer, or shall be committed as prescribed in said chapter seven. The warrant may also be issued by any of the courts mentioned in *this section* upon the like complaint as if application is made to a

magistrate. (Added by L. 1894, ch. 392; amended by L. 1895, ch. 880.)

Derivation: See L. 1882, chap. 360, § 8, repealing original section.

§ 697. Order to show cause why pardon should not be adjudged void; trial.

When the defendant shall be brought before the court it shall, forthwith, make an order that the defendant show cause why his pardon or commutation should not be adjudged to be void, and he should not be remanded to the place of his former imprisonment for the unexpired term of his sentence. The order shall set forth the facts which constitute the violation of or the neglect to perform the condition of the pardon or commutation. The defendant shall plead to said order in writing. If he admit the facts the court shall at once proceed to pronounce judgment. If the defendant shall deny any material fact, the issue so joined shall be tried by a jury. Upon such trial the people and the defendant shall each be allowed five peremptory challenges, and no more. Upon the return of the verdict the court shall, without delay, proceed to judgment. If judgment is rendered against the defendant it shall adjudge that his pardon or commutation is void, and shall commit him to the place of imprisonment from which he had been discharged, upon his pardon or commutation, there to be confined for that portion of the term of his former sentence which had not expired, when he had been discharged by virtue of the pardon or commutation. (Added by L. 1894, ch. 392. Original section repealed by L. 1882, ch. 360.)

Derivation: L. 1894, chap. 392.
People v. Trimble (1891), 38 St. Rep. 999, 15 N. Y. Supp. 60.

§ 698. Idem.

If an issue of fact upon a material question shall be raised by the answer of the defendant, and it shall appear that the violation of, or the failure to perform the condition took place in a county other than that in which the arrest was made, the court may, in its discretion, in furtherance of justice change the place of trial to such other county. The papers in the case shall be filed with the clerk of the county to which the place of trial was changed, with the order changing the place of trial, and a copy of such order shall be sent to the district attorney of such county, and the de-

fendant shall be committed to the custody of the sheriff of said county, or be held to bail to appear at the next term of the court in which the subsequent proceedings shall be had. All subsequent proceedings shall be had in the supreme court or county court of the county, to which the place of trial had been changed, with the same effect as if they had originally been begun in that court. (Added by L. 1894, ch. 392; amended by L. 1895, ch. 880. Original section repealed by L. 1882, ch. 360, § 3.)

Derivation: L. 1894, chap. 392; amended, L. 1895 chap. 880.

PART V.

OF PROCEEDINGS IN COURTS OF SPECIAL SESSIONS AND POLICE COURTS.

TITLE I. OF THE PROCEEDINGS IN COURTS OF SPECIAL SESSIONS IN THE COUNTIES OTHER THAN NEW YORK.

II. OF THE PROCEEDINGS IN THE COURTS OF SPECIAL SESSIONS IN THE CITY AND COUNTY OF NEW YORK.

III. OF APPEALS FROM THE COURTS OF SPECIAL SESSIONS.

TITLE I.

OF PROCEEDINGS IN COURTS OF SPECIAL SESSIONS IN THE COUNTIES OTHER THAN NEW YORK.

SECTION 699. Charge to be read to defendant, and he required to plead.
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§ 699. Charge to be read to defendant, and he required to plead.

In the cases in which the courts of special sessions or police courts have jurisdiction, when the defendant is brought before the magistrate, the charge against him must be distinctly read to him, and he must be required to plead thereto. (Amended by L. 1882, ch. 360.)

Derivation: 4 R. S. 712, § 7.

People v. Giles (1897), 152 N. Y. 136; Baker v. Beatty (1886), 39 Hun 477; People v. Cook (1887), 45 Hun 36; People v. Luczak (1894), 65 St. Rep. 418, 10 Misc. 591, 32 N. Y. Supp. 219; People v. Fuerst (1895), 69 St. Rep. 205, 34 N. Y. Supp. 1115; People v. Trumble (1883), 1 Crim. Rep. 446; People v. Moilnet (1895), 13 Misc. 302, 34 N. Y. Supp. 1114; People v. Johnston (1907), 187 N. Y. 321; People ex rel. Dinsmore v. Keeper, 125 App. Div. 140, 109 N. Y. Supp. 531; McCarg v. Burr (1905), 106 App. Div. 275, 281, 94 N. Y. Supp. 675; People v. Harber (1905), 100 App. Div. 317, 322, 91 N. Y. Supp. 571.

§ 700. The plea, and how put in.

The defendant may plead the same pleas as upon an indictment, as provided in section three hundred and thirty-two. His plea must be oral, and entered upon the minutes of the court.

Derivation: Same as § 699.

Baker v. Beatty (1886), 39 Hun 477; People v. Harber (1905), 100 App. Div. 317, 322, 91 N. Y. Supp. 571.

§ 701. Issue, how tried.

Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the court must proceed to try the issue.

Derivation: 4 R. S. 712, § 8.

People v. Cook (1887), 45 Hun 87; People v. Fuerst (1895), 69 St. Rep. 205, 34 N. Y. Supp. 1115; People v. Harber (1905), 100 App. Div. 317, 322, 91 N. Y. Supp. 571.

§ 702. Defendant may demand a trial by jury.

Before the court hears any testimony upon the trial, the defendant may demand a trial by jury.

Derivation: 4 R. S. 712, § 9.

People v. Cook (1887), 45 Hun 87; People v. Mollnet (1895), 34 N. Y. Supp. 1114; Wood v. Third Ave. R.R. Co. (1895), 13 Misc. 313, 34 N. Y. Supp. 698; People v. Van Houten (1895), 13 Misc. 609, 35 N. Y. Supp. 186; People v. Halwig (1903), 41 Misc. 227, 84 N. Y. Supp. 221.

§ 703. Jury, how summoned.

If a trial by jury be demanded, the court must forthwith draw from the box or other receptacle kept and used in accordance with the requirements of the Code of Civil Procedure, relative to the drawing of jurors in justice courts in civil cases, twelve of the ballots provided for in section twenty-nine hundred and ninety and twenty-nine hundred and ninety-one of the Code of Civil Procedure to be kept and used by justices of the peace in civil cases. If a person whose name thus drawn, shall, in the opinion of the court, reside more than three miles from the place where the said issue is to be tried, the court may set aside such juror, and in that case draw another ballot, and so can continue until twelve be drawn to serve as jurors. The court must thereupon insert the names of the persons so drawn in an order directed to any constable of the county, or marshal or police officer of the city or village where the offense is to be tried and having authority to execute process of the court, commanding him to summon the persons therein named to appear before the said court at a time not more than three days from the time of the making of said order, unless the trial of said issue be longer adjourned by consent and at a place named therein, to constitute a jury for the trial of the alleged offense. It shall be the duty of every town or city clerk in this state, within ten days after the taking effect of this act, to make and deliver to every recorder, police justice, or other judicial officer having authority

to hold courts of special sessions in their respective towns or cities in accordance with the provisions of this title, a certified copy of the jury list as is now required by section twenty-nine hundred and ninety of the Code of Civil Procedure to be furnished by them to the justices of the peace of their various towns and cities for the drawing of jurors in civil actions, and any such clerk neglecting or refusing so to do shall be deemed guilty of a misdemeanor. The boxes or other receptacles now used by justices of the peace for the purpose of drawing jurors in civil cases shall be used by them for drawing jurors to serve in courts of special sessions as herein provided, and recorders, police justices and other judicial officers empowered to hold such courts of special sessions, as provided by this title, are hereby required to procure and use the same in the manner provided by this section. (Amended by L. 1882, ch. 360; L. 1893, ch. 127.)

Derivation: Same as § 702.

People v. Hulett (1891), 15 N. Y. Supp. 681, 39 St. Rep. 648; People v. Harber (1905), 100 App. Div. 317, 322, 91 N. Y. Supp. 571.

§ 704. Summoning the jury, and returning the list.

The court must deliver, or cause to be delivered, the said order to any officer to whom the same is directed and empowered to execute the same. The officer to whom said order is so delivered must thereupon summon personally each of the persons drawn and named therein to serve as such jurors by exhibiting to them the said order and at the same time reading to or stating to them the substance thereof. He shall then make his return to said order certifying that he personally served it upon each of the persons named therein and in each case of his being unable to do so the reason thereof. Any person so summoned not attending at the time and place and not having sufficient legal excuse for doing so, specified in said order, is hereby declared guilty of contempt of court and is punishable by a fine not exceeding fifty dollars or imprisonment not more than thirty days, or by both such fine and imprisonment. (Amended by L. 1893, ch. 127.)

Derivation: 4 R. S. 718 § 10.

§ 705. Depositing ballots in box.

The names of the persons returned as jurors must be written *on separate ballots*, folded as nearly alike as possible, so that the

name cannot be seen, and must, under the direction of the court, be deposited in a box or other convenient thing.

Derivation: 4 R. S. 713, § 11.
People v. Hulett (1891), 15 N. Y. Supp. 631, 39 St. Rep. 648.

§ 706. Drawing the jury.

The court must then draw out six of the ballots, successively; and if any of the persons whose names are drawn do not appear, or are challenged and set aside, such further number must be drawn as will make a jury of six, after all legal challenges have been allowed.

Derivation: 4 R. S. 713, § 12.
People v. Hulett (1891), 15 N. Y. Supp. 631, 39 St. Rep. 648.

§ 707. Challenges.

The same challenges may be taken by either party, to the panel of jurors or to an individual juror, as on the trial of an indictment for a misdemeanor, so far as applicable; and the challenge must, in all cases, be tried by the court.

Derivation: 4 R. S. 713, § 12.
People v. McPherson (1893), 74 Hun 328, 26 N. Y. Supp. 286.

§ 708. Talesmen, when and how ordered and summoned.

If six of the jurors summoned do not attend, or be not obtained, the court may direct the officer to summon any of the bystanders, or others who may be competent, and against whom there is no sufficient cause of challenge, to act as jurors.

Derivation: 4 R. S. 713, § 13.
People v. Hulett (1891), 15 N. Y. Supp. 631, 39 St. Rep. 648.

§ 709. Punishing officer for not returning list, and issuing new order for jury.

If the officer to whom the order is delivered do not return it, as required by section seven hundred and four, he may be punished by the court, as for contempt; and the court must issue a new order for the summoning of jurors, in substantially the same form; upon which the same proceedings must be had as upon the one first issued. (Amended by L. 1882, ch. 360.)

Derivation: 4 R. S. 713, § 14.
People v. Hulett (1891), 39 St. Rep. 648, 15 N. Y. Supp. 631.

§ 710. Jury, how constituted.

When six jurors appear and are accepted, they constitute the jury.

Derivation: 4 R. S. 713, § 12.

§ 711. Their oath.

The court must thereupon administer to the jury the following oath or affirmation: "You do swear" [or you do solemnly affirm, as the case may be], that you will well and truly try this issue, between the people of the state of New York and A. B., the defendant, and a true verdict give, according to the evidence."

Derivation: 4 R. S. 713, § 15.

§ 712. Trial, how conducted.

After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

Derivation: 4 R. S. 713, § 16.

§ 713. Jury may decide in court, or retire; oath of officer on their retirement.

After hearing the proofs and allegations, the jury may either decide in court or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; that you will not permit any person to speak to or communicate with them, nor do so yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

Derivation: 4 R. S. 713, § 17.

People v. Herlihy (1901) 35 Misc. 716, 72 N. Y. Supp. 389.

§ 714. Delivering verdict and entry thereof.

When the jury have agreed on their verdict, they must deliver it publicly to the court, which must enter it in its minutes. (Amended by L. 1882, ch. 360.)

Derivation: 4 R. S. 713, § 18.

§ 715. Discharge of jury without verdict.

The jury cannot be discharged, after the cause is submitted to

them, until they have agreed upon and rendered their verdict, unless for some cause within the meaning of sections four hundred and twenty-eight and four hundred and twenty-nine, the court sooner discharge them. (Amended by L. 1882, ch. 360.)

New.

§ 716. In such case, cause to be retried.

If the jury be discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial; and so on until a verdict is rendered.

New.

§ 717. Judgment on conviction.

When the defendant pleads guilty, or is convicted either by the court or by a jury, the court must render judgment thereon of fine or imprisonment or both, as the case may require; but the fine cannot exceed fifty dollars, nor the imprisonment six months.

Derivation: 4 R. S. 714, § 19.

People v. Polhamus (1896), 8 App. Div. 136, 40 N. Y. Supp. 491, 74 St. Rep. 932; People ex rel. Stokes v. Risley (1885), 38 Hun 281; People ex rel. Baker v. Beatty (1886), 39 Hun 477; People v. Palmer (1887), 48 Hun 408, 109 N. Y. 413, 5 Crim. Rep. 107; People v. Jewett (1893), 69 Hun 552, 53 St. Rep. 306, 23 N. Y. Supp. 943; People ex rel. O'Brien v. Woodworth (1894), 78 Hun 587, 29 N. Y. Supp. 211; People ex rel. Johnson v. Webster (1895), 92 Hun 379, 72 St. Rep. 89, 36 N. Y. Supp. 995; People ex rel. Cook v. Smith (1889), 28 St. Rep. 307, 9 N. Y. Supp. 181; Matter of Bray (1890), 34 St. Rep. 642, 12 N. Y. Supp. 366; People, etc. v. Wemple (1894), 60 St. Rep. 767, 29 N. Y. Supp. 92; People ex rel. Knatt v. Davy (1895), 65 St. Rep. 163, 32 N. Y. Supp. 106; People v. Henschel (1890), 12 N. Y. Supp. 46, 35 St. Rep. 276; People v. Schad (1891), 12 N. Y. Supp. 697; Burns v. Norton (1891), 15 N. Y. Supp. 75, 35 St. Rep. 418; People ex rel. Evans v. McEwen (1884), 2 Crim. Rep. 313; People ex rel. Devoe v. Kelly (1884), 2 Crim. Rep. 429; People ex rel. Dunnigan v. Webster (1895), 14 Misc. 619, 71 St. Rep. 677, 36 N. Y. Supp. 745; People ex rel. Day v. Reese (1898), 24 Misc. 531, 53 N. Y. Supp. 965; People v. Carter (1888), 14 Civ. Pro. 241, 48 Hun 167, 15 St. Rep. 640; People ex rel. Bidwell v. Pitts (1906), 111 App. Div. 320, 97 N. Y. Supp. 509; People ex rel. Kane v. Sloane (1904), 98 App. Div. 450, 454, 90 N. Y. Supp. 762; People v. Schermerhorn (1908), 59 Misc. 149, 112 N. Y. Supp. 222; People v. De Graff (1907), 56 Misc. 430.

§ 718. Judgment of imprisonment, until fine be paid; extent of imprisonment; probation; restitution.

A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied; specifying the extent of the imprisonment, which cannot exceed one day for every one dollar of the fine. The court may require a defendant to pay a fine or restitution, or to make reparation, as provided in subdivision two of section four hundred and eighty-three. (Amended by L. 1910, ch. 610, in effect Sept. 1, 1910.)

Derivation: L. 1876, ch. 61.

People ex rel. Bedell v. Kenney (1897), 24 App. Div. 511, 48 N. Y. Supp. 749;

People v. Stock (1898), 26 App. Div. 565, 50 N. Y. Supp. 433; Matter of Seabar (1885), 38 Hun 218; Matter of Bray (1890), 12 N. Y. Supp. 366; 34 St. Rep. 643; Matter of Hoffman (1883), 1 Crim. Rep. 485; People v. Jeratino (1909), 62 Misc. 587, 589, 116 N. Y. Supp. 1121.

§ 719. Defendant, on acquittal, to be discharged; order that prosecutor pay the costs.

When the defendant is acquitted, either by the court or by a jury, he must be immediately discharged; and if the court certify, upon its minutes, or the jury find that the prosecution was malicious or without probable cause, the court must order the prosecutor to pay the costs of the proceedings, or to give satisfactory security, by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

Derivation: 4 R. S. 714, § 20.

People ex rel. McGrath v. Board, etc. (1890), 119 N. Y. 126, 28 St. Rep. 941; People ex rel. Baker v. Beatty (1886), 39 Hun 477; People v. Holmes (1886), 41 Hun 56, 5 Crim. Rep. 130; People ex rel. Cook v. Smith (1889), 28 St. Rep. 307; People v. Kranz (1909), 63 Misc. 146, 118 N. Y. Supp. 499.

§ 720. Judgment against prosecutor for costs.

If the prosecutor do not pay the costs or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced and appealed from, in all respects, in the same manner as a judgment rendered by a justice court held by a justice of the peace. (Amended by L. 1890, ch. 186.)

Derivation: 4 R. S. 714, § 20.

People v. Carr (1889), 54 Hun 445, 28 St. Rep. 288; People v. Norton (1884), 2 Crim. Rep. 324, 33 Hun 277; People v. Kranz (1909), 63 Misc. 146, 118 N. Y. Supp. 499.

§ 721. Certificate of conviction; its form.

When a conviction is had upon a plea of guilty, or upon a trial, the court must make and sign a certificate in substantially the following form:

"Court of special sessions or *police court.*

"County of *Albany,* town of *Berne* [or as the case may be].

"THE PEOPLE OF THE STATE OF NEW YORK
against
A. B.

January 1, 18 .

"The above-named A. B., having been brought before C. D., justice of special sessions, justice of the peace [or other magistrate, as the case may be], or police justice of the town [or city or village] of [as the case may be], charged with [briefly designating the offense].

"And having thereupon pleaded guilty or not guilty [or as the case may be], and demanded [or 'failed to demand,' as the case may be] a jury, and having been thereupon duly tried, and upon such trial duly convicted: It is adjudged that he be imprisoned in the jail of this county days [or 'pay a fine of dollars, and be imprisoned until it be paid, not exceeding days', or both, as the case may be].

"Dated at the town [or 'city'] of , the day of , eighteen hundred and .

C. D.

"Justice of the peace or police justice or other magistrate [as the case may be] of the town [or 'city'] of [as the case may be]." Amended by L. 1882, ch. 360.)

Derivation: 4 R. S. 717, § 88.

People ex rel. McGrath v. Board, etc. (1890), 119 N. Y. 126; People ex rel. Sullivan v. Sloan (1899), 39 App. Div. 268; 56 N. Y. Supp. 930; People ex rel. Baker v. Beatty (1886), 39 Hun 477; People v. Holmes (1886), 41 Hun 56, 5 Crim. Rep. 130; People ex rel. Ryan v. Webster (1895), 86 Hun 70, 33 N. Y. Supp. 337; People ex rel Forbes v. Markell (1895), 92 Hun 287, 71 St. Rep. 784, 36 N. Y. Supp. 723; People ex rel. Cook v. Smith (1889), 28 St. Rep. 307, 9 N. Y. Supp. 181; People ex rel. v. Board, etc. (1889), 28 St. Rep. 941; People v. Wood (1900), 66 N. Y. Supp. 1123; Matter of Brown (1897), 19 Misc. 692; 44 N. Y. Supp. 1096; People ex rel. Hunt v. Markell (1898), 22 Misc. 607, 50 N. Y. Supp. 766; People ex rel. Dinsmore v. Keeper, etc. (1908), 125 App. Div. 189, 109 N. Y. Supp. 531; People ex rel. Bidwell v. Pitts (1906), 111 App. Div. 320, 97 N. Y. Supp. 509; People v. Jacobs (1906), 51 Misc. 78, 100 N. Y. Supp. 784.

§ 722. Certificate of conviction; its form.

If the defendant have pleaded guilty, instead of the second paragraph, the certificate must state substantially as follows: "And the above-named A. B. having been thereupon duly convicted, upon a plea of guilty."

Derivation: Same as § 721.

People ex rel. Evans v. McEwen (1884), 2 Crim. Rep. 313; People ex rel. Bidwell v. Pitts (1906), 111 App. Div. 320, 97 N. Y. Supp. 509.

§ 723. Certificate, when filed.

Within twenty days after the conviction, the court must cause

the certificate to be filed in the office of the clerk of the county.

Derivation: 4 R. S. 717, § 39.

People ex rel. Snyder v. Whitney (1897), 22 Misc. 227; 49 N. Y. Supp. 591; Kibbe v. Wetmore (1884), 31 Hun 425; People v. Holmes (1886), 41 Hun 56, 5 Crim. Rep. 130; People ex rel. Forbes v. Markell (1895), 92 Hun 288, 36 N. Y. Supp. 723; People ex rel. Slatzkata v. Baker (1889), 19 St. Rep. 485, 3 N. Y. Supp. 537.

§ 724. Certificate, conclusive evidence.

The certificate, made and filed as prescribed in the last two sections, or a certified copy thereof, is conclusive evidence of the facts stated therein.

Derivation: 4 R. S. 717, § 41.

People ex rel. Forbes v. Markell (1895), 92 Hun 288, 36 N. Y. Supp. 723; People ex rel. Slatzkata v. Baker (1889), 19 St. Rep. 485, 3 N. Y. Supp. 536; People ex rel. McLane v. Whitney (1897), 22 Misc. 224, 49 N. Y. Supp. 589; People ex rel. Evans v. McEwen (1884), 2 Crim. Rep. 312; People ex rel. Bidwell v. Pitts (1906), 111 App. Div. 320, 97 N. Y. Supp. 509.

§ 725. Judgment, by whom executed.

The judgment must be executed by the sheriff of the county, or by a constable, marshal or policeman of the city, village or town in which the conviction is had, upon receiving a copy of the certificate prescribed in section seven hundred and twenty-one, certified by the court or the county clerk.

Derivation: 4 R. S. 716, § 31.

People ex rel. McGrath v. Board, etc. (1890), 119 N. Y. 126, 28 St. Rep. 941; People v. Holmes (1886), 41 Hun 56, 5 Crim. Rep. 130; People ex rel. Forbes v. Markell (1895), 92 Hun 287, 71 St. Rep. 734, 36 N. Y. Supp. 723; People ex rel. McLane v. Whitney (1897), 22 Misc. 227, 49 N. Y. Supp. 589; People ex rel. Evans v. McEwen (1884), 2 Crim. Rep. 312.

§ 726. Fine, by whom received before commitment, and how applied.

If a fine imposed be paid before commitment, it must be received by the court, and within thirty days after its receipt, paid by such court to the supervisor of the town in and for which such court is held. (Amended by L. 1884, ch 392; L. 1895, ch. 581.

Derivation: 4 R. S. 716, § 32; L. 1866, ch. 692 § 5.

People ex rel. Huntington v. Crennan (1894), 56 St. Rep. 810, 26 N. Y. Supp. 167; Town of Green Island v. Williams (1903), 79 App. Div. 260, 262, 79 N. Y. Supp. 791.

§ 727. Fine, to whom paid after commitment, and how applied.

If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person; who must in like manner, within thirty days after the receipt thereof, pay the same to the supervisor of the town in and for which such court is held. (Amended by L. 1895, ch. 581.)

Derivation: 4 R. S. 716, § 83.

§ 728. Proceedings against magistrate or sheriff, on neglect to pay fine to supervisor.

If the court or sheriff receiving the fine, fail to pay it to the supervisor as provided in the last two sections, such supervisor must immediately commence an action therefor against the sheriff or the magistrate or magistrates composing the court in the name of his town. (Amended by L. 1884, ch. 392; L. 1895, ch. 581.)

Derivation: 4 R. S. 716, § 84.

Town of Green Island v. Williams (1908), 79 App. Div. 262, 79 N. Y. Supp. 791.

§ 729. Subpoenas for witnesses, and punishing them for disobedience.

The court may issue subpœnas for witnesses, as provided in section six hundred and eight, and punish disobedience thereof, as provided in section six hundred and nineteen.

Derivation: 4 R. S. 716, § 85.

§ 730. Punishing jurors for non-attendance.

If a person summoned as a juror fail to appear, he may be punished by a fine not exceeding five dollars imposed by the court, by an order entered in his minutes. The order is deemed a judgment, in all respects, in favor of the poor of the town or city.

Derivation: 4 R. S. 716, § 86.

§ 731. No fees to jurors or witnesses.

No fees are payable to a juror or witness, for his service or attendance in a court of special sessions.

Derivation: 4 R. S. 717, § 87.

§ 732. When defendant requests a trial by police court, preliminary examination dispensed with.

When the defendant, upon being brought before the magistrate,

requests a trial by a court of special sessions, the preliminary examination of the case is dispensed with.

Derivation: 4 R. S. 711, § 2.

§ 733. During time allowed for bail, and until judgment, defendant to be continued in custody of officer or committed to jail.

During the time allowed to the defendant to give bail, and until judgment is given, he may be continued in the custody of the officer, or committed to the jail of the county to answer the charge, as the magistrate may direct.

Derivation: 4 R. S. 711, § 5.

§ 734. Form of commitment.

The commitment must be signed by the magistrate, by his name of office, and must be in substantially the following form:

"The sheriff of the county of , is required to receive and detain A. B., who stands charged before me for [designating the offense, generally], to answer the charge before a court of special sessions in the town [or city] of [as the case may be].

"Dated at the town [or city] of , the day of , 18 .

"C. D., justice of the peace of the town [or city] of , [as the case may be]."

New.

§ 735. By whom executed.

When committed, the defendant must be delivered to the custody of the proper officer, by any peace officer in the county to whom the magistrate may deliver the commitment.

New.

§ 736. Defendant may be admitted to bail.

Either before or after his committal, or upon being committed, the defendant must, if he require it, be admitted to bail.

New.

§ 737. Bail, how and by whom taken.

The bail must be taken by the magistrate, by a written undertaking, executed by the defendant, with one or more sufficient sureties approved by the magistrate, in a sum not exceeding two hundred dollars.

New.

§ 738. Form of the undertaking.

The undertaking must be in substantially the following form:

"A. B., having been duly charged before C. D., a justice of the peace in the town [or city] of , [as the case may be] with the offense of [designating the offense generally]. We undertake jointly and severally that he shall appear thereon from time to time, until judgment, at a court of special sessions in the town, or village [or city] of , [as the case may be], competent to try the case, or that he will pay to the county of [naming the county in which the court is held] the sum of dollars [inserting the sum fixed by the magistrate].

"Dated at the town [or city] of [as the case may be]."

(Amended by L. 1882, ch. 360.)

New in form.

County of Orleans v. Winchester (1892), 45 St. Rep. 411, 18 N. Y. Supp. 668.

§ 739. Undertaking, when forfeited, and action thereon.

If the defendant fail to appear according to the undertaking, the court, unless a sufficient excuse be shown, must declare the undertaking of bail forfeited, and the county treasurer must immediately commence an action for the recovery of the sum mentioned therein, in the name of the county.

New.

§ 740. Forfeiture, how and by whom remitted.

The county court of the county, or in the city of New York, the supreme court, may remit the forfeiture or any part thereof, in the cases and in the manner provided in the code of civil procedure.

(Amended by L. 1895, ch. 880.)

Derivation: 3 R. S. 486, § 37.

§ 740-a. Fees of justices of the peace in criminal cases.

Justices of the peace in the state shall hereafter be allowed and entitled to receive the fees hereinafter stated for the following named services in criminal cases: For administering an oath, ten cents; drawing an information, twenty-five cents; taking a deposition of witness on information, twenty-five cents; issuing a warrant of arrest, twenty-five cents; indorsing warrant from another county, twenty-five cents for each day's necessary attendance upon the hearing or examination of accused, one dollar;

every necessary adjournment of the hearing or examination, twenty-five cents, warrant of commitment, twenty-five cents; a subpœna, including all the names inserted therein, twenty-five cents, and each copy subpœna for service, ten cents; for filing each paper required by law, five cents; for furnishing copies of papers in, any proceeding, at the rate of five cents per folio of one hundred words; for each order in writing or certificate required by law, twenty-five cents; drawing an undertaking of bail, twenty-five cents; taking an acknowledgment, twenty-five cents.

For a venire, twenty-five cents; swearing each witness on the trial, ten cents, swearing a jury, twenty-five cents; swearing a constable to attend a jury, ten cents; a subpœna, including all the names inserted therein, twenty-five cents; for a trial fee, one dollar per day during the necessary and actual continuance of the trial; receiving and entering verdict of jury, twenty-five cents; entering the sentence of the court, twenty-five cents; warrant of commitment on sentence, twenty-five cents; for record of conviction and filing the same, seventy-five cents; but all such charges in any one case shall not exceed five dollars, unless such court continue more than one day; in such case the costs of such additional day may be added thereto; for return to any appeal, to be paid by the county, two dollars for services when associated with another justice of the peace or in cases of bastardy, for each day actually and necessarily spent, two dollars. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: ¶ 1: L. 1866, ch. 692, § 8, amended L. 1884, ch. 188, § 1. ¶ 2: L. 1862; L. 1866, ch. 692, § 4.

As to fees of officers in criminal actions in Ulster county, see Town Law, L. 1909, ch. 63, §§ 172, 173.

§ 740-b. Fees of constables in criminal cases.

Constables shall hereafter be allowed the fees hereinafter stated for the following services in criminal cases: For serving a warrant, seventy-five cents; for every mile traveled, going and returning, ten cents; for taking a defendant into custody on a commitment, twenty-five cents; for every mile traveled in taking a prisoner to jail, going and returning, ten cents; for serving every subpœna, twenty-five cents; for every mile traveled in serving each subpœna, going and returning, five cents; for notifying a *complainant,* twenty-five cents; for every mile traveled in notify-

ing a complainant, five cents, going and returning; for keeping a prisoner after being brought before the justice, and by his direction in custody, one dollar per day; for taking charge of a jury during their deliberations, fifty cents; for attending any court pursuant to a notice from the sheriff for that purpose, two dollars for each day, and five cents a mile for each mile traveled, in going to and returning from such court; which fees shall be chargeable to the county, and shall be paid by the treasurer thereof on the production of the certificate of the clerk, specifying the number of days and distance traveled. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1866, ch. 692, § 8, as amended by L. 1869, ch. 280, § 1; L. 1875, ch. 324, § 1, and L. 1877, ch. 89, § 1.

TITLE II.*

OF THE PROCEEDINGS IN THE COURTS OF SPECIAL SESSIONS IN THE CITY OF NEW YORK.

SECTION 741. Courts of special sessions in the city of New York to proceed as prescribed in last title, except as otherwise specially provided.
742. Trial by and form of information.
743. Duty of district attorney in relation to the information and dismissal of prosecution.
744. Clerk to issue subpœna, sign certificate of judgment, and enter proceedings of court and sentences upon convictions.
745. Fines before committal, to be paid to clerk; his accounts, when and to whom rendered.
746. No transcript of conviction to be filed; certified copy of minutes, conclusive evidence.

§ 741. Courts of special sessions in the city of New York to proceed as prescribed in last title, except as otherwise provided.

The courts of special sessions in the city of New York must proceed upon a criminal charge in the manner prescribed in the last title, except as provided in the next five sections, and as otherwise specially provided. (Amended by L. 1904, ch. 563. In effect Sept. 1, 1904.)

New.

People v. Harbor (1905), 100 App. Div. 317, 322, 91 N. Y. Supp. 571.

§ 742. Trial by and form of information.

All criminal actions in the courts of special sessions in the city of New York, except in the parts devoted to the trial of children under sixteen years of age and known as children's courts, must be prosecuted by information made by the district attorney. The information shall be signed by the district attorney of the county wherein the action was begun and may be substantially in the following form:

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* Practitioners should note the amendment of 1904 to § 64, *ante*. People v. *Miller (Special Sessions*, June, 1907), N. Y. L. J., June 29, 1907.

COURT OF SPECIAL SESSIONS OF THE CITY OF NEW YORK,
..... DIVISION.

THE PEOPLE OF THE STATE OF
NEW YORK,
against
A. B.

Be it remembered that I, the District Attorney of the County of , by this information accuse A. B. of the crime (here insert the name of the crime, if it have one, such as petit larceny, assault in the third degree, or the like, or if it have no general name insert a brief description of it as it is given by statute) committed as follows:

The said A. B., on the day of , 191 , at the City of New York, in the County of (here set forth the act charged as an offense.)

C. D.,
District Attorney of the County of

(Amended by L. 1904, ch. 563. In effect Sept. 1, 1904.)

Derivation: 4 R. S. 714, §§ 22, 23.

People ex rel. Burns v. Flaherty (1907), 119 App. Div. 463; People ex rel. Jones v. Langan (1909), 132 App. Div. 393, 116 N. Y. Supp. 718; People v. Dillon (1910), 197 N. Y. 254, 261.

§ 743. Duty of district attorney in relation to the information and dismissal of prosecution.

The district attorney of a county within the city of New York, on the receipt by him of the papers in a criminal action, returned to him by a magistrate as provided by section two hundred and twenty-one hereof, shall either make and file with the clerk of the court of special sessions an information against the defendant in such action, as provided in the last preceding section, or, move in said court for the dismissal of the prosecution of the action. This duty, unless the time prescribed therefor be extended by the court, shall be performed in manner following:

1. Where a defendant is in custody the information shall be filed not later than the day following the receipt by the district attorney of the magistrate's return, and in all other cases within ten days thereafter.

2. In all actions where return has been made to the district attorney as required by section two hundred and twenty-one of this

code, and he has failed to make and file an information as provided in subdivision one of this section, he shall, within thirty days after such return, move for the dismissal of the prosecution of such action, filing with the clerk of the court a statement in writing of his reasons for making such motion.

3. The district attorney shall file with the clerk of the court all papers returned to him under the provisions of section two hundred and twenty-one of this code, those upon which informations are based with the informations and all others when he moves to dismiss the prosecution of the action in which they were taken. (Amended by L. 1904, ch. 563. In effect Sept. 1, 1904.)

New.

People v. Spier (1907), 120 App. Div. 789, 105 N. Y. Supp. 741; People v. Dillon (1910), 197 N. Y. 254, 261, 263, 264.

§ 744. Clerk to issue subpoenas, sign certificate of judgment, and enter proceedings of court and sentences upon convictions.

Subpœnas for witnesses, and the certificate of the judgment, must be signed by the clerk of the court, who must also enter all the proceedings of the court, and the sentences upon convictions, in a book of minutes, and when necessary, certify the proceedings of the court.

Derivation: Former § 745. L. 1880, ch. 42, § 4 which superseded 4 R. S. 715, § 30. Amended, L. 1904, chap. 563. Former § 744, which provided that the trial must in all cases be before the court without a jury, has been eliminated.

§ 745. Fines before committal, to be paid to clerk; his accounts, when and to whom rendered.

Fines, imposed by the court, must be received by the clerk, if paid before committal in execution of judgment. He must, every thirty days, render to the comptroller of the city, accounts of the fines imposed and received by him, and of the expenses attending the court. (Former § 746. Amended by L. 1904, ch. 563. In effect Sept. 1, 1904.)

Derivation: Former § 746, L. 1880, ch. 42, § 6. Amended, L, 1904, chap. 563.

§ 746. No transcript of conviction to be filed; certified copy of minutes, conclusive evidence.

No transcript of a conviction, had in a court of special sessions

in the city of New York, need be certified or filed; but a copy of the minutes of the conviction, certified by the clerk, is conclusive evidence of the facts contained therein. (Former § 748. Amended by L. 1904, ch. 563. In effect Sept. 1, 1904.)

Derivation: Former § 748. L. 1880, ch. 42, § 7. Amended, L. 1904, chap. 563, in effect Sept. 1, 1904.

Sections 747 and 748 are out by this revision.

TITLE III.

OF APPEALS FROM COURTS OF SPECIAL SESSIONS.

SECTION 749. Review on appeal from minor courts.
750. Appeal, for what causes allowed.
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752. How allowed.
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756. Return, when and how made.
757. Compelling return.
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759. Appeal, by whom and how brought to argument.
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768. If new trial ordered, to be had in county court, etc.
769. Proceedings to carry judgment upon appeal into effect, to be had in the county court.
770. On judgment of county court, defendant may appeal to appellate division.
771. Judgment of supreme court upon appeal, final.
772. Proceedings to carry into effect judgment of supreme court.

§ 749. Review on appeal from minor courts.

A judgment upon conviction, rendered by a court of special sessions, police court, police magistrate, or justice of the peace, in any criminal action or proceedings or special proceeding of a criminal nature, including a judgment of commitment made under section four hundred and eighty-six of the Penal Law, may be reviewed by the county court of the county, upon an appeal as prescribed by this title, and not otherwise; and any appeals heretofore taken and allowed from a judgment of any police court or police magistrate in the manner that appeals are directed to be taken and *allowed by this title,* and now pending undetermined in any court

of this state, are hereby declared to be legal and valid and of the same force and effect as if taken after the passage of this act. An appeal from a judgment of commitment made under section four hundred and eighty-six of the Penal Law may be allowed to any person having, previous to such commitment, a right to the custody of the child; but upon such appeal, in addition to the notice and papers required by this title to be served on appeals in criminal actions, notice of all proceedings and copies of the affidavit and allowance of appeal therein, must be served upon the institution named in the commitment, and upon the society mentioned in section four hundred and ninety of the Penal Law, if there be one within the county. Such institution and society, or either, shall have the right to move to argue or dismiss, and to be heard upon the argument of such appeal; and shall have the like right to appeal from the judgment of the county court of the county to the supreme court as is conferred by section seven hundred and seventy of this Code upon a defendant, and to the court of appeals by section five hundred and nineteen of this Code; and pending any appeal and until the final determination thereof the child named in the commitment must remain in the custody of the institution therein specified. (Amended by L. 1884, ch. 372; L. 1890, ch. 39; L. 1895, ch. 880; L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

New.

People v. Giles (1897), 152 N. Y. 136, rev'g 12 App. Div. 496; Matter of Knowack (1899), 158 N. Y. 486; People ex rel. Bd. of C. N. Y. Soc., etc. (1900), 161 N. Y. 241; Bd. of Comrs. v. McCloskey (1897), 15 App. Div. 45, 44 N. Y. Supp. 111; People v. Burnham (1897), 22 App. Div. 617, 48 N. Y. Supp. 946; Crossett v. Carleton (1897), 23 App. Div. 386, 48 N. Y. Supp. 809; Killoran v. Barton (1898), 26 Hun 649; People v. Norton (1884), 33 Hun 277, 2 Crim. Rep. 324; People ex rel. v. Ct. of Sessions (1887), 45 Hun 54; People ex rel. Comrs., etc. v. Glaze (1892), 65 Hun 561, 48 St. Rep. 811, 20 N. Y. Supp. 577; People v. Carr (1890), 28 St. Rep. 287; 7 N. Y. Supp. 724; People v. Fuerst (1895), 69 St. Rep. 206, 34 N. Y. Supp. 1115; People ex rel. Stern v. N. Y. Soc., etc. (1899), 27 Misc. 458; 58 N. Y. Supp. 118; People v. Trumble (1883), 1 Crim Rep. 445; People v. Vitan (1888), 8 Crim. Rep. 27, 20 Abb. N. C. 298; People v. Johnston (1907), 187 N. Y. 321; People v. O'Neill (1907), 117 App. Div. 828, 102 N. Y. Supp. 988.

§ 750. Appeal, for what causes allowed.

An appeal may be allowed for an erroneous decision or determination of law or fact upon the trial and for the purposes of an appeal in all cases now pending or hereafter brought, a con-

viction for a criminal offense shall be deemed a final judgment although sentence shall have been suspended by the court in which the trial was had or otherwise suspended or stayed. (Amended by L. 1882, ch. 360; L. 1907, ch. 685. In effect Aug. 9, 1907.)

Derivation: 4 R. S. 718, § 44; L. 1859, ch. 339, § 3.

People ex rel. Comrs. v. Benson (1901), 63 App. Div. 144, 71 N. Y. Supp. 274, rev'g 32 Misc. 367; People v. Flaherty (1908), 126 App. Div. 65; People v. Markham (1906), 114 App. Div. 388, 99 N. Y. Supp. 1092.

§ 751. Appeal, how taken.

For the purpose of appealing, the defendant, or some one on his behalf, must within sixty days after the judgment, or within sixty days after the commitment where the appeal is from the latter, make an affidavit showing the alleged errors in the proceedings or conviction or commitment complained of, and must within that time present it to the county judge or a justice of the supreme court, or in the city and county of New York, to the recorder or a judge authorized to hold a court of general sessions in that city, or in the city of Albany to the recorder, and apply thereon for the allowance of the appeal. (Amended by L. 1890, ch. 39; L. 1897, ch. 781.)

Derivation: 4 R. S. 718, § 43; L. 1859, ch. 339 § 3.

Bd. of Comrs. v. McCloskey (1897), 15 App. Div. 45, 44 N. Y. Supp. 111; People v. Burnham (1897), 22 App. Div. 617, 48 N. Y. Supp. 946; People ex rel. Comrs. v. Benson (1901), 63 App. Div. 144, 71 N. Y. Supp. 274; People ex rel. Baker v. Beatty (1886), 39 Hun 477; People v. McGann (1887), 43 Hun 57; People v. Jewett (1893) 69 Hun 551, 23 N. Y. Supp. 942; People v. Parker (1893), 23 N. Y. Supp. 705; People v. Carter (1895), 68 St. Rep. 585, 34 N. Y. Supp. 764; People v. Flaherty (1908), 126 App. Div. 67; People ex rel. Commissioner v. Steinhart (1907), 57 Misc. 293; People v. Jacobs (1906), 51 Misc. 72, 100 N. Y. Supp. 734.

§ 752. How allowed.

If, in the opinion of the judge, it is proper that the question arising on the appeal should be decided by the county court, he must indorse on the affidavit an allowance of the appeal to that court; and the defendant, or his attorney, must within five days thereafter, serve a copy of the affidavit upon which the appeal is granted, together with a notice that the same has been allowed, upon the district attorney of the county in which the appeal is to be heard. (Amended by L. 1897, ch. 536.)

Derivation: Same as § 750.

People v. Burnham (1897), 22 App. Div. 617, 48 N. Y. Supp. 946; People ex

rel. Baker v. Beatty (1886), 39 Hun 477; People v. McGann (1887), 43 Hun 57; People v. Jewett (1893), 69 Hun 551, 23 N. Y. Supp. 942; People v. Mulkins, 25 Misc. 600, 54 N. Y. Supp. 414; Tirpak v. Hoe (1901), 53 Misc. 529, 103 N. Y. Supp. 798.

§ 753. Release on bail pending an appeal.

Upon allowing the appeal, if satisfied that there is a reasonable doubt whether the conviction should stand, but not otherwise, the judge may take from the defendant a written undertaking, with such sureties as he may approve, that the defendant will abide the judgment of the county court upon the appeal, and may thereupon order that he be discharged from imprisonment, on service of the order upon the officer having him in custody, or if he be not in custody, that all proceedings on the judgment be stayed. (Amended by L. 1892, ch. 279; L. 1895, ch. 880.)

Derivation: 4 R. S. 718, §§ 50, 51; L. 1859, ch. 339.

§ 754. Undertaking, when and with whom filed.

The undertaking upon the appeal must be immediately filed with the clerk of the county court, and the said clerk of the county court shall within five days thereafter, give notice to the district attorney of the county that such bond has been filed, which notice shall give the name of the defendant and his sureties, the offense for which the defendant was charged and the amount of the bail given. (Amended by L. 1897, ch. 536.)

Derivation: 4 R. S. 718, § 52.

§ 755. Delivery of affidavit, and allowance of appeal, to magistrate or clerk of police court, within five days after allowance.

The affidavit and allowance of the appeal must be delivered to the magistrate, or clerk of the court rendering the judgment, within five days after the allowance of the appeal, and when so delivered the appeal is deemed taken. (Amended by L. 1897, ch. 536.)

Derivation: 4 R. S. 718 § 45.

People v. Mulkins (1899), 25 Misc. 600, 54 N. Y. Supp. 414; Tirpak v. Hoe (1907), 53 Misc. 532, 103 N. Y. Supp. 795.

§ 756. Return, when and how made.

The magistrate or court rendering the judgment, must make a return to all the matters stated in the affidavit, and must cause the

affidavit and return to be filed in the office of the county clerk within ten days after the service of the affidavit and allowance of the appeal. (Amended by L. 1895, ch. 880.)

Derivation: 4 R. S. 718, § 46.

People v. Giles (1896), 12 App. Div. 498, 42 N. Y. Supp. 749, rev'd 152 N. Y. 136; People v. McGann (1887), 43 Hun 57; People v. Jewett (1893), 69 Hun 551, 23 N. Y. Supp. 943; People v. Soloman (1907), 57 Misc. 288, 106 N. Y. Supp. 1110; People v. Halwig, 41 Misc. 229, 84 N. Y. Supp. 221.

§ 757. Compelling return.

If the return be not made within the time prescribed in the last section, the county court or the judge thereof, may order that a return be made within a specified time which may be deemed reasonable; and the court may, by attachment, compel a compliance with the order. (Amended by L. 1895, ch. 880.)

Derivation: 4 R. S. 718, § 47.

§ 758. Ordering and compelling further or amended return.

If the return be defective, a further or amended return may be ordered, and the order may be enforced in the manner provided in the last section.

Derivation: Same as § 757.

People v. Carnrick (1891), 15 N. Y. Supp. 438.

§ 759. Appeal, by whom and how brought to argument.

The appeal must be brought to argument by the defendant at the next term, upon a notice of not less than ten days before said term to the district attorney of the county. (Amended by L. 1899, ch. 601.)

Derivation: 4 R. S. 718, § 48; L. 1848, ch. 357, § 1.

Tirpak v. Hoe (1907), 53 Misc. 532, 103 N. Y. Supp. 795; People v. Addes (1904), 45 Misc. 314, 315, 92 N. Y. Supp. 389.

§ 760. If not brought to argument, as provided in last section, to be dismissed, unless continued for cause shown.

If the defendant omit to bring the appeal to argument, as provided in the last section, the court must dismiss it, unless it continue the same, by special order, for cause shown.

Derivation: 4 R. S. 719, § 57.

Tirpak v. Hoe (1907), 53 Misc. 530, 103 N. Y. Supp. 798; People v. Addes *(1904), 45 Misc. 315, 92* N. Y. Supp. 389.

§ 761. Service of return on district attorney, and consequences of failure.

The defendant must serve upon the district attorney, a copy of the return, with or before the notice of argument. If he fail to do so, the appeal must be dismissed, upon proof of the failure, unless the court otherwise direct.

Derivation: L. 1848, ch. 357, § 1.

Tirpak v. Hoe (1907), 53 Misc. 580, 103 N. Y. Supp. 798.

§ 762. If brought to hearing by defendant, appeal must be argued, though no one oppose, etc.

If the appeal be brought to hearing by the defendant, it must be argued, though no one appear to oppose; but if brought on by the district attorney, he may take judgment of affirmance, unless the defendant appear to argue the appeal.

New.

§ 763. Appeal to be heard on original return.

The appeal must be heard upon the original return; and no copy thereof need be furnished for the use of the court.

New.

People v. Hildebrand (1896), 74 St. Rep. 549, 38 N. Y. Supp. 958; People v. Solomon (1907), 57 Misc. 288, 106 N. Y. Supp. 1110; People v. Brown (1909), 64 Misc. 677.

§ 764. What judgment may be rendered.

After hearing the appeal the court must give judgment without regard to technical errors or defects which have not prejudiced the substantial rights of the defendants, and may render the judgment which the court below should have rendered, or may, according to the justice of the case, affirm or reverse the judgment, in whole or in part, as to all or any of the defendants, if there be more than one, or may order a new trial, or may modify the sentence. (Amended by L. 1882, ch. 360.)

New.

People v. Polhamus (1896), 8 App. Div. 137, 40 N. Y. Supp. 491; People ex rel. Comrs. v. Benson (1901), 63 App. Div. 146, 71 N. Y. Supp. 274; People v. Cutler (1882), 28 Hun 465; People ex rel. Stopes v. Risley (1885), 38 Hun 282; People v. Starks (1888), 17 St. Rep. 284, 1 N. Y. Supp. 721; People v. Harris (1890), 28 St. Rep. 301, 7 N. Y. Supp. 773; People v. Upton (1890), 29 St. Rep. 779, 9 N. Y. Supp. 684; People ex rel. Cronin v. Coffey (1891), 41 St. Rep. 449, 16 N. Y. Supp. 501; People v. Brockett (1895), 65 St. Rep. 669, 32 N. Y. Supp. 511; People v. Hildebrand (1896), 74 St. Rep. 551, 38 N. Y. Supp. 958; People v. Clark (1891), 16 N. Y. Supp. 695; People v. Mulkins (1899), 25 Misc. 603, 54 N. Y. Supp. 414; People v. Johnston (1907), 187 N. Y. 321; People v. Brown (1909), 64 Misc. 677.

§ 765. Judgment to be entered on the minutes.

When judgment is given upon the appeal, it must be entered upon the minutes.

New.

§ 766. Order upon judgment for affirmance.

If the judgment be affirmed, the court must direct its execution, and if the defendant be discharged on bail, after the commencement of the execution of a judgment of imprisonment, must commit him to the proper custody for the remainder of his term of imprisonment.

Derivation: 4 R. S. 719, §§ 56, 57.

§ 767. Order upon judgment of reversal.

If the judgment be reversed, and the defendant be imprisoned in pursuance of the judgment of the police court, the county court must order him to be discharged. (Amended by L. 1895, ch. 880.)

Derivation: 4 R. S. 719, §§ 54, 55.
People v. Trumble (1883), 1 Crim. Rep. 447.

§ 768. If new trial ordered, to be had in county court, etc.

If a new trial be ordered, it must be had in the county court, in the same manner as upon an issue of fact on an indictment; and that court may proceed to judgment and execution, as in an action prosecuted by indictment. But where the appeal was from a judgment of commitment made under section four hundred and eighty-six of the Penal Law, the new trial shall be had before the county court without a jury. (Amended by L. 1890, ch. 39; L. 1895, ch. 880; L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

New.
People v. Hildebrand (1896), 74 St. Rep. 551, 38 N. Y. Supp. 958.

§ 769. Proceedings to carry judgment upon appeal into effect, to be had in county court.

If any proceeding be necessary to carry the judgment upon the appeal into effect, they must be had in the county court. (Amended by L. 1895, ch. 880.)

Derivation: 4 R. S. 719, § 54; L. 1895, chap. 880.
People v. Hildebrand (1896), 74 St. Rep. 551, 38 N. Y. Supp. 958.

§ 770. On judgment of county court, defendant may appeal to appellate division.

If the judgment on the appeal be against the defendant, he may appeal therefrom to the appellate division of the supreme court, in the same manner as from a judgment in an action prosecuted by indictment, and may be admitted to bail upon the appeal, in like manner. (Amended by L. 1895, ch. 880.)

New.

People v. Snyder (1887), 44 Hun 198; People ex rel. Wright v. Ct. of Sessions (1887), 45 Hun 55; People ex rel. Comrs. v. Benson (1900), 32 Misc. 367, 66 N. Y. Supp. 734, rev'd 63 App. Div. 142, 71 N. Y. Supp. 274; People v. Johnston (1907), 187 N. Y. 321; O'Neil v. Mansfield (1907), 47 Misc. 516, 521, 95 N. Y. Supp. 1009.

§ 771. Judgment of supreme court upon appeal final.

The judgment of the appellate division of the supreme court upon the appeal is final; except that where the original appeal was from a judgment of commitment of a child, either party may appeal to the court of appeals in like manner as a defendant under section five hundred and nineteen of this Code. (Amended by L. 1890, ch 39; L. 1895, ch. 880.)

New.

People ex rel. Comrs. v. Cullen (1896), 151 N. Y. 54; People v. Snyder (1887), 44 Hun 198; People v. Johnston (1907), 187 N. Y. 321; People v. Malone (1907), 189 N. Y. 568, 569; People v. Glen (1903), 173 N. Y. 398.

§ 772. Proceedings to carry into effect judgment of supreme court.

The same proceedings must be had, to carry into effect the judgment of the appellate division of the supreme court upon the appeal, as if it had been taken upon a judgment in an action prosecuted by indictment. (Amended by L. 1895, ch. 880.)

New.

People v. Clark (1891), 16 N. Y. Supp. 695.

PART VI.*

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

TITLE I. OF CORONERS' INQUESTS, AND THE DUTIES OF CORONERS.

II. OF SEARCH WARRANTS.

III. OF THE OUTLAWRY OF PERSONS CONVICTED OF TREASON.

IV. OF PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

V. OF PROCEEDINGS RESPECTING BASTARDS.

VI. OF PROCEEDINGS RESPECTING VAGRANTS.

VII. OF PROCEEDINGS RESPECTING DISORDERLY PERSONS.

VIII. OF PROCEEDINGS RESPECTING THE SUPPORT OF POOR PERSONS.

IX. OF PROCEEDINGS RESPECTING MASTERS, APPRENTICES AND SERVANTS.

X. OF CRIMINAL STATISTICS.

XI. MISCELLANEOUS PROVISIONS RESPECTING PROCEEDINGS OF A CRIMINAL NATURE.

TITLE I.

OF CORONERS' INQUESTS, AND THE DUTIES OF CORONERS.

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780. Warrant for arrest of party charged by verdict.

781. Form of warrant.

* Matter of Jones, 181 N. Y. 391; People v. Jackson, 47 Misc. 70; Matter of *Montgomery*, 126 App. Div. 74.

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786. County treasurer to place money to credit of county; and to sell other property and place proceeds to credit of county.
787. Money, when and how paid to representatives of deceased.
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789a. Justices of the peace to act as coroners in certain cases.
790. Compensation of coroners.

§ 773. In what cases coroner to summon a jury; number of jurors to be summoned.

Whenever a coroner is informed that a person has been killed or dangerously wounded by another, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, or has committed suicide, he must go to the place where the person is and forthwith inquire into the cause of the death, or wounding, and in case such death, or wounding, occurred in a county in which is situated in whole, or in part, a city having a population of more than five hundred thousand as appears by the last state enumeration, but not otherwise, summon not less than nine, nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at a specified place, to inquire into the cause of the death or wound, and if it shall appear from the sworn examination of the informant, or complainant, or if it shall appear from the evidence taken on, or during, the inquisition, or hearing, that any person, or persons, are chargeable with the killing or wounding, or that there is probable cause to believe that any person or persons are chargeable therewith, and if such person or persons be not in custody, he must forthwith issue a warrant for the arrest of the person or persons charged with such killing or wounding; and upon the arrest of any person, or persons, chargeable therewith, he must be arraigned before the coroner for examination, and the said coroner shall have power to commit the person or persons so arrested to await the result of the inquisition or decision. Any coroner shall

be disqualified from acting as such in any case where the person killed, or dangerously wounded, or dying suddenly, as aforesaid, is a co-employee with said coroner, of any person, or persons, association, or corporation, or where it appears that the killing or wounding has been occasioned, directly or indirectly, by the employer of said coroner. (Amended by L. 1887, ch. 321; L. 1892, ch. 562; L. 1899, ch. 464; L. 1908, ch. 102. In effect Sept. 1, 1908.)

Derivation: 4 R. S. 742, § 1; L. 1847, ch. 118.

People v. Coombs (1899), 36 App. Div. 296, 55 N. Y. Supp. 276; People v. Fitzgerald (1887), 43 Hun 44, 5 Crim. Rep. 339; Bandell v. Dept. of Health (1906), 193 N. Y. 141; People v. Johnston (1907), 187 N. Y. 331; People v. Jackson (1907), 121 App. Div. 858, 861; People v. Jackson (1905), 47 Misc. 60, 70, 95 N. Y. Supp. 286; People ex rel. Patterson v. Flynn (1904), 44 Misc. 20, 89 N. Y. Supp. 697; Matter of Jones (1905), 181 N. Y. 389, 391; People v. Jackson (1905), 47 Misc. 60, 95 N. Y. Supp. 286.

§ 774. Fees of jurors summoned on coroner's jury.

The fees of jurors necessarily summoned upon any coroner's inquest shall be not to exceed one dollar for each day's service, shall be a county charge and shall be audited and allowed by the boards of supervisors in the same manner as other fees and charges mentioned in this title. But the coroner holding such inquest and summoning said jurors shall make report to the next succeeding board of supervisors after every such inquest of the names of such jurors and the term of service of each, and upon what inquest rendered, on or before the third day of the annual session in each year. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

New.

People v. Fitzgerald (1887), 43 Hun 45, 5 Crim. Rep. 340.

§ 775. Witnesses to be subpoenaed.

The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint. He must summon and examine as witnesses, every person who, in his opinion, or that of any of the jury, has any knowledge of the facts; and he must summon as a witness a surgeon or physician, who must, in the presence of the jury, inspect the body, and give a professional opinion as to the cause of the death or wounding.

Derivation: R. S. 742, § 3; L. 1873, ch. 833.

People v. Fitzgerald (1887), 43 Hun 45, 5 Crim. Rep. 340; People v. Jackson *(1905), 47 Misc. 60, 70,* 71, 95 N. Y. Supp. 286.

§ 776. Compelling attendance of witnesses, and punishing their disobedience.

A witness served with a subpœna may be compelled to attend and testify, or punished by the coroner for disobedience, as upon a subpœna issued by a magistrate, as provided in this Code.

Derivation: 4 R. S. 743, § 4.

§ 777. Verdict of the jury.

After inspecting the body and hearing the testimony, the coroner must render his decision, or if in a county where a jury is summoned, as provided in section seven hundred and seventy-three, the jury must render their verdict, and certify it by an inquisition in writing, signed by him or them, as the case may be, and setting forth who the person killed or wounded is, and when, where and by what means he came to his death or was wounded; and if he were killed or wounded, or his death were occasioned by the act of another, by criminal means, who is guilty thereof, in so far as by such inquisition he or such jury has been able to ascertain. (Amended by L. 1899, ch. 464.)

Derivation: 4 R. S. 743, § 5.

People v. Coombs (1899), 36 App. Div. 296, 55 N. Y. Supp. 276, aff'd 158 N. Y. 588; People v. Board, etc. (1891), 15 N. Y. Supp. 680; People v. Jackson (1905), 47 Misc. 60, 70, 71, 95 N. Y. Supp. 286.

§ 778. Testimony, how taken and filed.

The testimony of the witnesses examined before the coroner or the jury must be reduced to writing by the coroner, or under his direction, and must be forthwith by him, with the inquisition or decision, filed in the office of the clerk of the county court of the county, or of a city court having power to inquire into the offense by the intervention of a grand jury. (Amended by L. 1899, ch. 464.)

Derivation: 4 R. S. 743, § 8.

People v. Willett (1885), 36 Hun 504; People v. Board, etc. (1891), 15 N. Y. Supp. 680.

§ 779. If defendant arrested before inquisition filed, depositions to be delivered to magistrate, and by him returned.

If, however, the defendant be arrested before the inquisition can be filed, the coroner must deliver it with the testimony to the magistrate before whom the defendant is brought, as provided in section seven hundred and eighty-one, who must return it with the

depositions and statement taken before him, in the manner prescribed in section two hundred and twenty-one.

New.

Matter of Ramscar (1882), 1 Crim. Rep. 34.

§ 780. Warrant for arrest of party charged by verdict.

If the coroner or a jury, where a jury is summoned, finds that the person was killed or wounded by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another, by criminal means, and the party committing the act be ascertained by the inquisition or decision, and be not in custody, the coroner must issue a warrant, signed by him with his name of office, into one or more counties, as may be necessary, for the arrest of the person charged. (Amended by L. 1899, ch. 464.)

Derivation: 4 R. S. 748, § 6.

People v. Jackson (1905), 47 Misc. 60, 70, 95 N. Y. Supp. 286.

§ 781. Form of warrant.

The coroner's warrant must be in substantially the following form: County of Albany (or as the case may be). In the name of the people of the state of New York, to any sheriff, constable, marshal or policeman in this county: An inquisition having been this day found by a coroner's jury before me (or a decision having been made by me), stating that A. B. has come to his death by the act of C. D. by criminal means (or as the case may be), as found by the inquisition (or decision); or, information having been this day laid before me that A. B. has been killed or dangerously wounded by C. D., by criminal means (or as the case may be), you are hereby commanded forthwith to arrest the above-named C. D. and bring him before me, or in the case of my absence or inability to act, before the nearest or most accessible coroner in this county.

Dated at the city of Albany (or as the case may be), this day of , 18 .

E. F.,
Coroner of the County of Albany.
[Or as the case may be.]

(Amended by L. 1882, ch. 360; L. 1887, ch. 321; L. 1899, ch. 464.)

New in form.

People v. Jackson (1907), 121 App. Div. 858, 861, 106 N. Y. Supp. 1046, aff'g *191 N. Y. 293.*

§ 782. Warrant, how executed.

The coroner's warrant may be served in any county; and the officer serving it must proceed thereon, in all respects, as upon a warant of arrest on an information, except that when served in another county it need not be indorsed by a magistrate of that county.

New.

§ 783. Proceedings of magistrate on defendant's being brought before him.

The magistrate or coroner, when the defendant is brought before him, must proceed to examine the charge contained in the inquisition or information, and hold the defendant to answer, or discharge him therefrom in the same manner, in all respects, as upon a warrant of arrest on an information. (Amended by L. 1887, ch. 321.)

People v. Jackson (1907), 121 App. Div. 858, 861, 106 N. Y. Supp. 1046, aff'd 191 N. Y. 298.

New.

§ 784. Clerk with whom inquisition is filed to furnish magistrate with copy of the same and of testimony returned therewith.

Upon the arrest of the defendant, the clerk with whom the inquisition is filed, must, without delay, furnish to the magistrate or coroner before whom the defendant is brought, a certified copy of the inquisition and of the testimony returned therewith. (Amended by L. 1887, ch. 321.)

New.

§ 785. Coroner to deliver money or property found on deceased to county treasurer.

The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against him for its recovery, by a civil action in the name of the county.

Derivation: L. 1842, ch. 155; L. 1867, ch. 956, § 14.

§ 786. County treasurer to place money to credit of county, and to sell other property and place proceeds to credit of county.

Upon the delivery of money to the treasurer he must place it to the credit of the county. If it be other property, he must, within

thirty days, sell it at public auction, upon reasonable public notice; and must, in like manner, place the proceeds to the credit of the county.

Derivation: L. 1842, ch. 155, § 2.

§ 787. Money, when and how paid to representatives of deceased.

If the money in the treasury be demanded within six years, by the legal representatives of the deceased, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county, in relation to the matter, or it may be so paid at any time thereafter, upon the order of the board of supervisors.

Derivation: Same as § 786.

§ 788. Supervisors to require statement under oath from coroner, before auditing his accounts.

Before auditing and allowing the account of the coroner, the board of supervisors must require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

Derivation: L. 1842, ch. 155, § 3.

§ 789. In New York city magistrates may perform duties of coroner during his inability.

In the city of New York, if the coroner be absent, or be unable for any cause to attend, the duties imposed by this title may be performed by a city magistrate, but by no other officer, with the same authority, and subject to the same obligations and penalties as apply to the coroner. (Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

Derivation: 4 R. S. 743, § 9; L. 1852, ch. 289. See also L. 1864, ch. 379.

§ 789-a. Justices of the peace to act as coroners in certain cases.

Any justice of the peace, in each of the several towns and cities of this state, is hereby authorized and empowered, in case the attendance of a coroner can not be procured within twelve hours *after the* discovery of a dead body, upon which an inquest is now

by law required to be held, to hold an inquest thereon in the same manner and with the like force and effect as coroners.

In all cases in which the cause of death is not apparent, it shall be the duty of the justice to associate himself with a regularly licensed physician, to make a suitable examination for the discovery of said cause.

Each justice of the peace who shall hold inquests by virtue of this section, shall receive the same fees as are now allowed by law to coroners. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1864, ch. 879, §§ 1-8.

§ 790. Compensation of coroners.

The coroner is entitled, for his services in holding inquests and performing any other duty incidental thereto, to such compensation as defined by special statutes.

Derivation: L. 1842, ch. 155, § 4.

TITLE II.

OF SEARCH WARRANTS.

SECTION 791. Search warrant defined.
792. Upon what grounds it may be issued.
793. It cannot be issued but upon probable cause, supported by affidavit.
794. Before issuing warrant, magistrate must examine, on oath, the complainant and his witnesses.
795. Depositions, what to contain.
796. Magistrate, when to issue warrant.
797. Form of the warrant.
798. By whom served.
799. Officer may break open door or window to execute warrant.
800. May break open door or window to liberate person acting in his aid, or for his own liberation.
801. When warrant may be served in the night-time, and direction therefor.
802. Within what time warrant must be executed and returned.
802a. Search warrant in aid of commissioner of agriculture.
803. Officer to give receipt for property taken.
804. Property, when delivered to magistrate; how disposed of.
805. Return of warrant ,and delivery to magistrate of inventory of property taken.
806. Magistrate to deliver copy of inventory to the person from whose possession property is taken, and to applicant for warrant.
807. If grounds for warrant controverted, magistrate to take testimony.
808. Testimony, how taken and authenticated.
809. Property, when to be restored to person from whom it was taken.
810. Depositions, search warrant, etc., to be returned to county court or city court having jurisdiction, etc.
811. Maliciously and without probable cause procuring search warrant, a misdemeanor.
812. Peace officer, exceeding his authority.
813. Person charged with felony supposed to have a dangerous weapon.

§ 791. Search warrant defined.

A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

New.

People v. Noelke (1883), 29 Hun 469, 1 Crim. Rep. 268.

§ 792. Upon what grounds it may be issued.

It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken, on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be;

2. When it was used as the means of committing a felony; in which case it may be taken, on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the crime, or of any other person in whose possession it may be;

3. When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another, to whom he may have delivered it for the purpose of concealing it, or preventing its being discovered; in which case it may be taken, on the warrant, from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

Derivation: 4 R. S. 746, § 25.
People v. Noelke (1883), 29 Hun 469, 1 Crim. Rep. 268.

§ 793. It cannot be issued but upon probable cause, supported by affidavit.

A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched.
U. S. Const. 4th Amend.

§ 794. Before issuing warrant, magistrate must examine, on oath, the complainant and his witnesses.

The magistrate must, before issuing the warrant, examine, on oath, the complainant and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them. (Amended by L. 1882, ch. 360.)
New.

§ 795. Depositions, what to contain.

The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.
New.

§ 796. Magistrate, when to issue warrant.

If the magistrate be thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

Derivation: 4 R. S. 746, § 26.

§ 797. Form of the warrant.

The warrant must be in substantially the following form:

"County of *Albany* [*or as the case may be*].

"In the name of the people of the state of New York:

"To any peace officer in the county of *Albany* [or as the case may be]: Proof by affidavit having been this day made before me, by [naming every person whose affidavit has been taken], that [stating the particular grounds of the application, according to section seven hundred and ninety-two, or if the affidavit be not 'positive that there is probable cause for believing that,' stating the ground of the application in the same manner].

"You are therefore commanded in the day-time [or 'at any time of the day or night,' as the case may be, according to section eight hundred and one] to make immediate search on the person of C. D. [or 'in the building situated,' describing it, or any other place to be searched, with reasonable particularity as the case may be], for the following property [describing it with reasonable particularity]: and if you find the same, or any part thereof, to bring it forthwith before me at [stating the place].

Dated at the city of *Albany* [or as the case may be], the day of , eighteen hundred .

"E. F.,

"Justice of the peace of the city [or town], of [or as the case may be]

New in form.

§ 798. By whom served.

A search warrant may, in all cases, be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer, on his requiring it, he being present and acting in its execution.

Derivation: 4 R. S. 746, § 28.

§ 799. Officer may break open door or window, to execute warrant.

The officer may break open an outer or inner door or window of a building, or any part of the building, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

New.

Phelps v. McAdoo (1905), 47 Misc. 524, 525, 94 N. Y. Supp. 265.

§ 800. May break open door or window to liberate person acting in his aid, or for his own liberation.

He may break open any outer or inner door or window of a building for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

New.

§ 801. When warrant may be served in the night-time, and direction therefor.

The magistrate must insert a direction in the warrant that it be served in the day-time, unless the affidavits be positive that the property is on the person or in the place to be searched; in which case he may insert a direction that it be served at any time of the day or night.

Derivation: 4 R. S. 746, § 27.

§ 802. Within what time warrant must be executed and returned.

A search warrant must be executed, and returned to the magistrate by whom it was issued, if issued in the city and county of New York, within five days after its date, and if in any other county, within ten days. After the expiration of those times respectively, the warrant, unless executed, is void.

New.

§ 802-a. Search warrant in aid of the commissioner of agriculture.

A search warrant, in the name of the people, directed to a peace officer commanding him to search for dairy products, imitations thereof and substitutes therefor, to open any place of

business, factory, building, store, bakery, hotel, tavern, boarding-house, restaurant, saloon, lunch counter, place of public entertainment, carriage, car, boat, package, vessel, barrel, box, tub or can, containing, or believed to contain the same, in the possession or under the control of any person who shall refuse to allow the same to be inspected or samples taken therefrom by the commissioner of agriculture, an assistant commissioner or any person or officer authorized by the commissioner or by the agricultural law or to which access is refused or prevented, and to allow and enable the officer mentioned in section thirty-five of the agricultural law applying therefor to take such samples of dairy products, imitations thereof and substitutes therefor, found in the execution of the warrant, as the officer applying for the search warrant shall designate when the same are found, shall be issued by any magistrate to whom application is made therefor, whenever it shall be made to appear to him that such person has refused to permit any dairy products, imitations thereof or substitutes therefor, to be inspected or samples taken therefrom, or that access thereto by any officer mentioned in section thirty-five of the agricultural law has been refused or prevented, and that such officer has reasonable grounds for believing that such person has any dairy products, imitations thereof or substitutes therefor in his possession, or under his control, or that he is violating any of the provisions of the agicultural law relating thereto. The provisions of section seven hundred and ninety-one to section eight hundred and two, both inclusive, of the code of criminal procedure, shall apply to such warrant as far as applicable thereto. The peace officer to whom the warrant is delivered shall make a return in writing of his proceedings thereunto to the magistrate who issued the same. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1885, ch. 183, § 26, as added by L. 1887, ch. 588, § 1.

§ 803. Officer to give receipt for property taken.

When the officer takes property under the warrant, he must give a receipt for the property taken [specifying it in detail], to the person from whom it was taken by him, or in whose possession it was found, or, in the absence of any person, he must leave it in the place where he found the property.

New.

§ 804. Property, when delivered to magistrate how disposed of.

When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections six hundred and eighty-seven to six hundred and eighty-nine, both inclusive. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of section seven hundred and ninety-two, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

New.

§ 805. Return of warrant, and delivery to magistrate of inventory of property taken.

The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly, or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the magistrate, to the following effect: "I, A. B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

New.

§ 806. Magistrate to deliver copy of inventory to the person from whose possession property is taken, and to applicant for warrant.

The magistrate must thereupon if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

New.

§ 807. If grounds for warrant controverted, magistrate to take testimony.

If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

New.

§ 808. Testimony, how taken and authenticated.

The testimony given by each witness must be reduced to writing and authenticated in the manner prescribed in section two hundred.

New.

§ 809. Property, when to be restored to person from whom it was taken.

If it appear that the property taken is not the same as that prescribed in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

New.

§ 810. Depositions, search warrant, etc., to be returned to county court or city court having jurisdiction, etc.

The magistrate must annex together the depositions, the search warrant and return, and the inventory, and return them to the next county court of the county or city court, having power to inquire into the offense in respect to which the search warrant was issued, by the intervention of a grand jury, at or before its opening on the first day. (Amended by L. 1895, ch. 880.)

New.

§ 811. Maliciously and without probable cause procuring search warrant, a misdemeanor.

A person who maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

New.

§ 812. Peace officer, exceeding his authority.

A peace officer who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

New.

§ 813. Person charged with felony supposed to have a dangerous weapon, etc.

When a person charged with felony is supposed by the magistrate before whom he is brought, to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

New.

TITLE III.

OF THE OUTLAWRY OF PERSONS CONVICTED OF TREASON.

SECTION 814. When application for outlawry may be made.
815. On what proof to be made.
816. Order that the defendant appear to receive judgment, or be outlawed.
817. Publication of order.
818. Judgment on appearance of defendant, or on his not appearing.
819. Effect of the judgment.
820. Filing judgment roll, and transcripts thereof.
821. Judgment roll, of what to consist.
822. Appeal may be at any time taken, by defendant, from judgment.
823. Appeal, how taken, and proceedings thereon.
824. Effect of reversal.
825. Defendant may be arrested to receive judgment, notwithstanding outlawry.
826. No other proceeding for outlawry in criminal cases allowed.

§ 814. When application for outlawry may be made.

When, upon a bench warrant issued for the apprehension of a person who has pleaded guilty, or against whom a verdict has been rendered upon an indictment for treason, it is duly returned that the defendant cannot be found, the district attorney of the county may apply to the court in which the conviction was had, for judgment of outlawry.

Derivation: 4 R. S. 744, §§ 10, 11.

§ 815. On what proof to be made.

The application must be founded upon the return of the bench warrant, and upon proof, by affidavit, that the defendant has escaped, and on diligent search cannot be found within the county.

Derivation: 4 R. S. 744, § 11.

§ 816. Order that the defendant appear to receive judgment, or be outlawed.

The court, upon being satisfied that the defendant has escaped,

and cannot, upon diligent search, be found in the county, must make an order that he appear on the first day of the next term, to receive judgment upon the conviction or be outlawed.

Derivation: 4 R. S. 744, § 12.

§ 817. Publication of order.

The order must be immediately published, once a week for six successive weeks, in a newspaper published in the county, and in the state paper. The expense of the publication is a county charge.

Derivation: 4 R. S. 744, § 13.

§ 818. Judgment on appearance of defendant, or on his not appearing.

If the defendant appear, judgment must be rendered against him upon the conviction. If he do not appear, the court, upon proof of the due publication of the order, must render judgment that the defendant be outlawed, and that all his civil rights be forfeited.

Derivation: 4 R. S. 744, §§ 14, 15.

§ 819. Effect of the judgment.

The defendant is thereupon deemed civilly dead, and forfeits to the people of this state, during his life-time, and no longer, all freehold estate in real property, of which he was seized in his own right, at the time of committing the treason, or at any time thereafter, and all his personal property.

Derivation: 4 R. S. 744, § 16.

§ 820. Filing judgment roll, and transcripts thereof.

Upon a judgment of outlawry, the judgment roll must be made up, and filed with the clerk of the county in which the conviction was had, and docketed with the same effect as in a civil action. A transcript thereof may also be filed and docketed, with the like effect, in any other county.

Derivation: 4 R. S. 744 § 17.

§ 821. Judgment roll, of what to consist.

The judgment roll consists of the several matters prescribed in section four hundred and eighty-five, except the fifth subdivision; to which must be annexed a certified copy of the order to appear

for judgment, the affidavits proving its publication, and a certified copy of the judgment of outlawry.

New.

§ 822. Appeal may be at any time taken by defendant from judgment.

An appeal may be taken by the defendant, at any time, from a judgment of outlawry.

Derivation: 4 R. S. 744, § 18. 14, Abb. Pr. 77.

§ 823. Appeal, how taken, and proceedings thereon.

The appeal may be taken in person or by counsel, in the same manner, and the proceedings thereon are the same as upon an appeal from a judgment of conviction on an indictment.

New.

§ 824. Effect of reversal.

If the judgment be reversed on appeal, the defendant is restored to his civil rights.

Derivation: 4 R. S. 744, § 18.

§ 825. Defendant may be arested to receive judgment, notwithstanding outlawry.

Notwithstanding judgment of outlawry against the defendant, he may be arrested at any time thereafter to receive judgment upon the conviction.

Derivation: 4 R. S. 744, § 18.

§ 826. No other proceeding for outlawry in criminal cases allowed.

No other proceeding for the outlawry of the defendant in a criminal action can be had than that provided in this title.

Derivation: 4 R. S. 745, § 20.

TITLE IV.

OF PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

CHAPTER I. Fugitives from another state or territory, into this state.
II. Fugitives from this state, into another state or territory.

CHAPTER I.

FUGITIVES FROM ANOTHER STATE OR TERRITORY INTO THIS STATE.

SECTION 827. To be delivered up by the governor, on demand, etc.
828. Magistrate to issue warrant.
829. Proceedings for arrest and commitment of the person charged.
830. When, and for what time to be committed.
831. His admission to bail.
832. Magistrate to give notice to the district attorney, of the name of the person and the cause of his arrest.
833. District attorney to give notice to executive authority of the state or territory, etc.
834. Person arrested to be discharged, unless surrendered within the time limited.
835. ———.

§ 827. To be delivered up by the governor, on demand, etc. It shall be the duty of the governor, in all cases where, by virtue of a requisition made upon him by the governor of another state or territory, any citizen, inhabitant or temporary resident of this state is to be arrested, as a fugitive from justice (provided that said requisition be accompanied by a duly certified copy of the indictment or information from the authorities of such other state or territory, charging such person with treason, felony or crime in such state or territory), to issue and transmit a warrant for such purpose to the sheriff of the proper county or his under sheriff, or in the cities of this state (except in the city and county of New York, where such warrant shall only be issued to the superintendent or any inspector of police) to the chiefs, inspectors or superintendents of police, and only such officers as are above mentioned, and such assistants as they may designate to act under their direction shall be competent to make service of or execute the same. The governor may direct that any such fugitive be brought before

him, and may for cause, by him deemed proper, revoke any warrant issued by him, as herein provided. The officer to whom is directed and intrusted the execution of the governor's warrant must, within thirty days from its date, unless sooner requested, return the same and make return to the governor of all his proceedings had thereunder, and of all facts and circumstances relating thereto. Any officer of this state, or of any city, county, town or village thereof, must, upon request of the governor, furnish him with such information as he may desire in regard to any person or matter mentioned in this chapter.

2. Before any officer to whom such warrant shall be directed or intrusted shall deliver the person arrested into the custody of the agent or agents named in the warrant of the governor of this state, such officer must, unless the same be waived, as hereinafter stated, take the prisoner or prisoners before a judge of the supreme court, or a county judge, who shall, in open court if in session, otherwise at chambers, inform the prisoner or prisoners of the cause of his or their arrest, the nature of the process, and instruct him or them that if he or they claim not to be the particular person or persons mentioned in said requisition, indictment, affidavit or warrant annexed thereto, or in the warrant issued by the governor thereon, he or they may have a writ of *habeas corpus* upon filing an affidavit to that effect. Said person or persons so arrested may, in writing, consent to waive the right to be taken before said court or a judge thereof at chambers. Such consent or waiver shall be witnessed by the officer intrusted with the execution of the warrant of the governor, and one of the judges aforesaid or a counselor at law of this state, and such waiver shall be immediately forwarded to the governor by the officer who executed said warrant. If, after a summary hearing as speedily as may be consistent with justice, the prisoner or prisoners shall be found to be the person or persons indicted or informed against, and mentioned in the requisition, the accompanying papers and the warrant issued by the governor thereon, then the court or judge shall order and direct the officer intrusted with the execution of the said warrant of the governor to deliver the prisoner or prisoners into the custody of the agent or agents designated in the requisition and the warrant issued thereon, as the agent or agents upon the part of such state to receive *him or them;* otherwise to be discharged from custody by the court

or judge. If upon such hearing the warrant of the governor shall appear to be defective or improperly executed, it shall be by the court or judge returned to the governor, together with a statement of the defect or defects, for the purpose of being corrected and returned to the court or judge, and such hearing shall be adjourned a sufficient time for the purpose, and in such interval the prisoner or prisoners shall be held in custody until such hearing be finally disposed of.

3. It shall not be lawful for any person, agent or officer to take any person or persons out of this state, upon the claim, ground or pretext that the prisoner or prisoners consent to go, or by reason of his or their willingness to waive the proceedings afore described, and any officer, agent, person or persons who shall procure, incite or aid in the arrest of any citizen, inhabitant or temporary resident of this state, for the purpose of taking him or sending him to another state, without a requisition first duly had and obtained, and without a warrant duly issued by the governor of this state, served by some officer as in this section provided, and without, except in case of waiver in writing as aforesaid, taking him before a court or judge as aforesaid, unless in pursuance to the provisions of the following sections of this chapter, and any officer, agent, person or persons who shall, by threats or undue influence, persuade any citizen, inhabitant or temporary resident of this state to sign the waiver of his right to go before a court or judge as hereinbefore provided, or who shall do any of the acts declared by this chapter to be unlawful, shall be guilty of a felony, and upon conviction be sentenced to imprisonment in a state prison or penitentiary for the term of one year. Any willful violation of this act by any of the above-named officers shall be deemed a misdemeanor in office. (Amended by L. 1886, ch. 638; L. 1895, ch. 880.)

Derivation: N. S. Const. Art. iv, § 2.

Matter of Scrafford (1891), 59 Hun 327, 12 N. Y. Supp. 947; In re Ryan (1895), 36 N. Y. Supp. 888; People ex rel. Ryan v. Conlin (1895), 15 Misc. 304, 36 N. Y. Supp. 888; People ex rel. Koepel v. Bingham (1907), 189 N. Y. 126, aff'g 117 App. Div. 414, 102 N. Y. Supp. 878; People ex rel. Corkran v. Hyatt (1902), 172 N. Y. 176, 190; People ex rel. Cornett v. Warden (1908), 60 Misc. 525.

§ 828. Magistrate to issue warrant.

A magistrate may issue a warrant as a preliminary proceeding to the issuing of a requisition by the governor of another state or

territory upon the governor of this state for the apprehension of a person charged with treason, felony or other crime, who shall flee from justice and be found within this state. (Amended by L. 1886, ch. 628.)

Derivation: L. 1839, ch. 350, § 1.

People ex rel. Gallagher v. Hagan (1901), 34 Misc. 85, 69 N. Y. Supp. 475.

§ 829. Proceedings for arrest and commitment to the person charged.

The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this Code, for the arrest and commitment of a person charged with a public offense committed in this state; except, that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the state or territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

Derivation: L. 1839, ch. 350, § 1.

§ 830. When and for what time to be committed.

If from the examination under such warrant it appears to the satisfaction of the magistrate that the person under arrest is charged in such other state or territory with treason, felony or other crime and has fled from justice, the magistrate, by warrant reciting the accusation, must commit him to the proper custody in his county for a time specified in the warrant, to enable an arrest of the fugitive to be made under the warrant of the governor of this state, which commitment shall not exceed thirty days, exclusive of the day of arrest, on the requisition of the executive authority of the state or territory in which he is charged to have committed the offense, unless he give bail, as provided in the next section, or until he be legally discharged. (Amended by L. 1886, ch. 638; L. 1897, ch. 427.)

Derivation: L. 1839, ch. 350, § 3.

People ex rel. Greenberg v. Warden (1903), 83 App. Div. 456, 82 N. Y. Supp. 489; People ex rel. Robinson v. Flynn (1907), 54 Misc. 7, 105 N. Y. Supp. 368.

§ 831. His admission to bail.

Any judge of any court named in section eight hundred and *twenty*-seven may, in his discretion, admit the person arrested to

bail, by an undertaking, with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, which must not be later than the expiration of thirty days from the date of arrest exclusive of such date, and for his surrender to be arrested upon the warrant of the governor of this state. (Amended by L. 1886, ch. 638.)

Derivation: L. 1889, ch. 350, § 4.

§ 832. Magistrate to give notice to the district attorney of the name of the person and the cause of his arrest.

Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney of the county of the name of the person and the cause of his arrest.

Derivation: L. 1889, ch. 350, § 5.

§ 833. District attorney to give notice to executive authority of the state or territory, etc.

The district attorney must immediately thereafter give notice to the executive authority of the state or territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Derivation: L. 1889, ch. 350, § 5.

§ 834. Person arrested to be discharged, unless surrendered within the time limited.

The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of this state.

Derivation: L. 1889, ch. 350, § 6.

§ 835.

Derivation: L. 1889, ch. 350, § 6. Repealed by L. 1896, ch. 638.

TITLE IV.-a*

§ 836. Proceedings when person in confinement appears to be insane.

If any person in confinement under indictment, or under a criminal charge, or for want of bail for good behavior, or for keeping the peace, or for appearing as a witness, or by order of any justice, or under any other than civil process, shall appear to be insane, a judge of a court of record of the city or county or a justice of the supreme court of the judicial district in which the alleged insane person is confined, in all cases outside the city of New York, and in all cases within the city of New York in which the maximum fine for the offense exceeds five hundred dollars or the term of imprisonment for the offense exceeds one year, shall institute a careful investigation, call two legally qualified examiners in lunacy, neither of whom shall be a physician connected with the institution in which such person so to be examined is confined, and other credible witnesses, invite the district attorney to aid in the examination, and, if he deem it necessary, call a jury, and for that purpose is fully empowered to compel the attendance of witnesses and jurors, and if it be satisfactorily proved that he is insane, said judge shall discharge him from imprisonment and instead commit him to a state institution for the care, custody and treatment of the insane, where he shall remain until restored to his right mind. The superintendent of such institution shall then inform the said judge and district attorney so that the person so confined may be returned forthwith to the authority by which he was originally held in confinement; and the proceeding for which the person was in such confinement shall then be resumed. The fees of the medical examiners called as witnesses, and the other necessary expenses for such investigation, shall be audited and allowed at a reasonable sum by said judge, and upon the presentation of the order made by him, such fees and expenses shall be paid by the county treasurer of the county where such person is confined, as a county charge. In case any person within the city of New York, in confinement under indictment or under a criminal charge, or for want of bail for good behavior, or for keeping the peace, or for appearing as a witness, or by order of any justice, or under any other than civil

* *Added, L. 1909,* ch. 66, § 2. In effect Feby. 17, 1909.

process, in which the maximum fine for the offense does not exceed five hundred dollars or the maximum term of imprisonment for the offense does not exceed one year, or in which no fine or term of imprisonment is provided, shall appear to be insane, the judge or magistrate of the court having jurisdiction over the proceeding in which such person is confined shall commit such apparently insane person, in the boroughs of Manhattan and the Bronx to the care and custody of the board of trustees of Bellevue and allied hospitals who shall keep such person in a safe and comfortable place until the question of his sanity be determined, and in the boroughs of Brooklyn, Queens and Richmond, to the care and custody of the commissioner of public charities, who shall keep such person in a safe and comfortable place, until the question of his sanity be determined. Whenever in the city of New York a person is committed as apparently insane as above provided, it shall be the duty of the board of trustees of Bellevue and allied hospitals or the commissioner of public charities, as the case may be, forthwith to take proper measures for the determination of the question of the insanity of such person. If the person shall be found to be sane by the authorities to whom he was committed, the judge committing such person shall be notified, and such person shall be returned forthwith to the authority by which he was originally held in confinement; and the proceeding for which the person was in such confinement shall then be resumed. If such person be found to be insane, and no demand is made for a hearing in behalf of the alleged insane person, a judge of a court of record of the city or county or a justice of the supreme court of the judicial district in which the alleged insane person is confined, shall discharge him from imprisonment and instead commit him to a state institution for the care, custody and treatment of the insane, where he shall remain until restored to his right mind. If a demand is made for a hearing in behalf of the alleged insane person such judge shall proceed in accordance with sections eighty-two and eighty-three of chapter twenty-seven of the consolidated laws. When an insane person, committed to a state institution in accordance with the provisions of this section, shall have been restored to his right mind, the superintendent of such institution shall inform the judge who committed the person of the fact of his recovery, and such person shall be returned forthwith to the authority by which he was originally held in confinement; and the proceeding for which the person was in such confinement shall then be resumed. (Added by L. 1909, ch. 66, § 2. Amended by L. 1910, ch. 557, in effect Sept. 1, 1910.)

TITLE V.

OF PROCEEDINGS RESPECTING BASTARDY.

CHAPTER I. Proceedings before magistrates, respecting bastards.
II. Appeals from the orders of magistrates, respecting bastards.
III. Enforcement of the undertaking for the support of the bastard or its mother, or for appearance on appeal.

CHAPTER I.

PROCEEDINGS BEFORE MAGISTRATE RESPECTING BASTARDS.

SECTION 838. Definition of a bastard.
839. Who are liable for its support.
840. When bastard, chargeable to the public, is born or is likely to be born, application to be made to a justice of the peace or police justice.
841. Examination by the magistrate, and warrant against the father.
842. Justice designated as a magistrate, and person proceeded against as defendant.
843. Warrant, when to be served in another county.
844. Magistrate in another county may take undertaking, etc.
845. On giving undertaking, defendant to be discharged.
846. If undertaking not given, defendant to be taken before magistrate who issued the warrant.
847. Before what magistrate in the same county defendant is to be taken, when the magistrate issuing the warrant is unable to act.
848. The magistrate to associate with himself another magistrate, and they to examine the matter.
849. Adjournment of examination; security from defendant.
850. Determination of the case, and order of the magistrates.
851. Defendant to pay the costs, and give undertaking for support, etc., or for appearance at county court.
852. On giving undertaking, defendant to be discharged, otherwise to be committed.
853. Commitment of defendant during examination.
854. Proceedings by magistrate, when security is given by defendant on arrest out of the county.
855. Examination in such case, and order thereon.
856. Magistrates may compel mother to disclose the father of the bastard; proceedings, if she refuse.
857. If mother possess property, two magistrates may make an order that she pay for the support of the child.
858. If she do not comply, she must be committed, or discharged on undertaking.

SECTION 859. Magistrates may reduce amount directed to be paid by the father or mother; county court may reduce or increase it.
860. Proceedings against the father or mother absconding from their place of residence.

§ 838. Definition of a bastard.

A bastard is a child who is begotten and born,

1. Out of lawful matrimony;

2. While the husband of its mother was separate from her for a whole year previous to its birth; or,

3. During the separation of its mother from her husband pursuant to a judgment of a competent court.

Derivation: 1 R. S. 641, § 1.

Keller v. Mertens (1899), 37 App. Div. 499, 55 N. Y. Supp. 1043; Dunn v. Arkenburgh (1900), 48 App. Div. 520, 62 N. Y. Supp. 861; People ex rel. Smith v. McFarline (1900), 50 App. Div. 96, 63 N. Y. Supp. 622; Simis v. Alwang (1901), 61 App. Div. 426, 70 N. Y. Supp. 580; People v. Ct. of Sessions (1887), 45 Hun 58; People v. Harber (1905), 100 App. Div. 317, 322, 91 N. Y. Supp. 571; People v. Crispi (1905), 106 App. Div. 176, 177, 94 N. Y. Supp. 372.

§ 839. Who are liable for its support.

The father and mother of a bastard are liable for its support. In case of their neglect or inability, it must be supported by the county, city or town chargeable therewith under the provisions of the poor law. (Amended by L. 1904, ch. 520; L. 1908, ch. 248, in effect Sept. 1, 1904.)

Derivation: 1 R. S. 642, § 2.

Keller v. Cleary (1900), 56 App. Div. 468, 472, 67 N. Y. Supp. 862; Kirkpatrick v. Crowley (1897), 20 Misc. 161, 45 N. Y. Supp. 824.

§ 840. When bastard, chargeable to the public, is born, or is likely to be born, application to be made to a justice of the peace or police justice.

If a woman be delivered of a bastard, or be pregnant of a child likely to be born such, and which is chargeable to a county, city or town, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the woman is, must apply to a justice of the peace or police justice in the county to inquire into the facts of the case. (Amended by L. 1895, ch. 887; L. 1905, ch. 327. In effect Sept. 1, 1905.)

Derivation: 1 R. S. 642, § 5.

People ex rel. Bd. etc. v. Schselmar (1896), 8 App. Div. 517, 40 N. Y. Supp.

779; Keller v. Mertens (1899), 37 App. Div. 498, 55 N. Y. Supp. 1043; Keller v. Cleary (1900), 56 App. Div. 468, 67 N. Y. Supp. 862; People ex rel. Moore v. Beehler (1892), 68 Hun 44, 17 N. Y. Supp. 419; People v. Ogden (1896), 40 N. Y. Supp. 827; People v. Crispi (1905), 106 App. Div. 176, 178, 94 N. Y. Supp. 372

§ 841. Examination by the magistrate and warrant against the father.

The magistrate must, by the examination of the woman on oath, and any other testimony which may be offered, ascertain the father of the bastard, and must issue his warrant, directed to a peace officer of the county, commanding him, without delay, to apprehend the father and bring him before the justice, for the purpose of having an adjudication as to the filiation of the bastard.

Derivation: 1 R. S. 642, § 6.
People ex rel. Moore v. Beehler (1892), 68 Hun 44, 17 N. Y. Supp. 419.

§ 842. Justice designated as a magistrate, and person proceeded against as defendant.

An officer issuing a warrant or making an examination, as provided in this chapter, is designated as a magistrate, and the person against whom the warrant is issued as the defendant.

New.
Staacke v. Preble (1887), 43 Hun 441.

§ 843. Warrant, when to be served in another county.

If the defendant reside in another county than that in which the warrant issued, the magistrate must, by an indorsement thereon, direct the sum in which the defendant shall give security, and the officer must deliver the warrant to a justice of the peace or police justice in the city or town in which the defendant resides or is found. The magistrate to whom it is presented, on proof, under oath, of the signature of the magistrate who issued the warrant, must then indorse a direction thereon, that it be served in the county in which he resides, and the defendant may be arrested in that county accordingly. Upon this proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterward appear that the warrant *was illegal*ly or improperly issued.

Derivation: *1 R. S. 643, §§ 7, 11.*

§ 844. Magistrate in another county may take undertaking, etc.

When the defendant is arrested in another county, he must be taken before the magistrate who indorsed the warrant, or before another magistrate of the same city or county, who may take from the defendant an undertaking, with sufficient sureties, to the effect:

1. That he will indemnify the county, and town or city, where the bastard was or is likely to be born, and every other county, town or city, against any expense for the support of the bastard, or of its mother during her confinement and recovery, and to pay the costs of arresting the defendant, and of any order of filiation that may be made, or that the sureties will pay the sum indorsed on the warrant; or

2. That the defendant will appear and answer the charge at the next county court of the county where the warrant was issued, and obey its order thereon. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 643, § 8.

People v. Fridy (1894), 83 Hun 240, 31 N. Y. Supp. 899; People ex rel. Kenfield v. Lyon (1894), 64 St. Rep. 740, 31 N. Y. Supp. 942; Standring v. Moore (1895), 74 St. Rep. 493, 38 N. Y. Supp. 818.

§ 845. On giving undertaking, defendant to be discharged.

When either of the undertakings mentioned in the last section is given, the magistrate must discharge the defendant, and must indorse a certificate of the discharge upon the warrant. He must also deliver the warrant, with the undertaking, to the officer, who must return it to the magistrate granting the warrant, by whom the same proceedings must be had, as if he had taken the undertaking.

Derivation: 1 R. S. 643, § 9.

§ 846. If undertaking not given, defendant to be taken before magistrate who issued the warrant.

If the defendant do not give security, as provided in section eight hundred and forty-four the officer must take him before the magistrate who issued the warrant.

Derivation: 1 R. S. 643, § 10.

§ 847. Before what magistrate in the same county, defendant is to be taken, when the magistrate issuing the warrant is unable to act.

If, however, the magistrate who issued the warrant be absent or unable to act, the defendant must be taken before the nearest or most accessible magistrate in the same county. The officer must, at the same time, deliver to the magistrate the warrant, with his return indorsed and subscribed by him.

Derivation: 1 R. S. 656, § 71.

§ 848. The magistrate to associate with himself another magistrate, and they to examine the matter.

The magistrate before whom the defendant is brought, as provided in the last two sections, must immediately associate with himself another justice of the peace or police justice in the same county or city; and the two magistrates thus associated, must inquire into the charge, and must examine on oath, the woman who is the mother of or pregnant with the bastard in the presence of the defendant, in respect to the charge, and hear any testimony which may be offered in relation thereto.

Derivation: 1 R. S. 644, § 11.

People ex rel. Garrett v. Ogden (1896), 8 App. Div. 465, 40 N. Y. Supp. 827; People ex rel. Kirkpatrick v. Crowley (1898), 25 App. Div. 176, 49 N. Y. Supp. 214; People, etc. v. Higgins (1894), 77 Hun 105, 28 N. Y. Supp. 458; People ex rel. Comrs. v. Dando (1886), 20 Abb. N. C. 245, 14 Daly 69.

§ 849. Adjournment of examination; security from defendant.

The magistrates may, on the application of the defendant, for good cause, adjourn the examination, not exceeding thirty days, upon the defendant giving an undertaking, with two sufficient sureties, to the effect that he will appear before the magistrates at the time appointed, or that the sureties will pay the sum mentioned therein, which must be fixed by the magistrates, and which must be a full indemnity for the expense of supporting the bastard and its mother, as provided in section eight hundred and fifty-one. Until the determination by the magistrates, if not admitted to bail, the defendant must be detained in custody of an officer or be committed to the common jail for detention in

the same manner as a prisoner arrested in a civil cause. (Amended by L. 1894, ch. 221.)

Derivation: 1 R. S. 644, § 12; Id. 645, § 16.

People v. Higgins (1897), 151 N. Y. 570, 77 Hun 106; People v Dando (1886), 14 Daly 69; People ex rel. etc. v. C. C. Buffalo (1894), 28 N. Y. Supp. 158.

§ 850. Determination of the case, and order of the magistrates.

Upon the hearing the magistrates must determine who is the father of the bastard, and must proceed as follows:

1. If they determine that the defendant is not the father of the bastard, he must be forthwith discharged;

2. If they determine that he is the father, they must make an order of filiation, specifying therein the sum to be paid weekly or otherwise by the defendant, for the support of the bastard; and if the mother be indigent, the sum to be paid by the defendant for her support, during her confinement and recovery; and in case said bastard shall die, that the defendant will pay the necessary funeral expenses.

3. They must certify the reasonable costs of arresting the defendant, and of the order of filiation;

4. They must reduce their proceedings to writing, and subscribe them. (Amended by L. 1904, ch. 520; in effect Sept. 1, 1904.)

Derivation: 1 R. S. 644, § 13.

People ex rel. Smith v. McFarline (1900), 50 App. Div. 95, 63 N. Y. Supp. 622; Keller v. Cleary (1900), 56 App. Div. 469, 67 N. Y. Supp. 862; Standring v. Moore (1895), 74 St. Rep. 493, 38 N. Y. Supp. 813; People ex rel. Crouse v. Leavitt (1891), 15 N. Y. Supp. 618; People v. Dando (1886), 14 Daly 69; Burnham v. Tryon (1906), 112 App. Div. 771, 98 N. Y. Supp. 600.

§ 851. Defendant to pay the costs, and give undertaking for support etc., or for appearance at county court.

If the defendant be adjudged to be the father, he must immediately pay the amount certified for the costs of the arrest and of the order of filiation, and enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect,

1. That he will pay weekly or otherwise, as may have been ordered, the sum directed for the support of the child, and of the mother during her confinement and recovery, or which may be ordered by the county court of the county; and that he will in-

demnify the county, and town or city where the bastard was or may be born [as the case may be], and every other county, town or city, which may have been or may be put to expense for the support of the bastard, or of its mother during her confinement and recovery, against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the magistrates; or,

2. That he will appear at the next term of the county court of the county, to answer the charge and obey its order thereon, or that the sureties will pay a sum equal to a full indemnity for supporting the bastard and its mother, as provided in the first subdivision of section eight hundred and forty-four. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 645, §§ 14, 16.

People etc. v. Shulman (1896), 8 App. Div. 517, 40 N. Y. Supp. 779; People ex rel. Smith v. McFarline (1900), 50 App. Div. 98, 63 N. Y. Supp. 622; Tillotson v. Martin (1886), 40 Hun 320; People ex rel. Downs v. Lindsay (1889), 53 Hun 284, 25 St. Rep. 519, 6 N. Y. Supp. 38; People ex rel. Moore v. Buhler (1892), 63 Hun 44, 17 N. Y. Supp. 419; People ex rel. Comrs. v. Schildwachter (1895), 87 Hun 367, 34 N. Y. Supp. 352; People ex rel. Crouse v. Leavitt (1891), 15 N. Y. Supp. 619; Standring v. Moore (1895), 74 St. Rep. 495, 38 N. Y. Supp. 813; Mayor v. Celia (1898), 23 Misc. 139, 50 N. Y. Supp. 637; People v. Dando (1886), 14 Daly 69; Kirkpatrick v. Crowley (1897), 20 Misc. 161, 45 N. Y. Supp. 824; Burnham v. Tryon, (1906), 112 App. Div. 771, 98 N. Y. Supp. 600; People ex rel Thomann v. Calkin (1908), 128 App. Div. 319.

§ 852. On giving undertaking defendant to be discharged, otherwise to be committed.

Upon a compliance with the provisions of the last section, the magistrates must discharge the defendant; but otherwise, they or either of them must, by warrant, commit him to the county jail, or in the city of New York, to the city prison of that city, until he be discharged by the county court of the county, or deliver an undertaking, as prescribed by the last section. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 645, § 15.

People ex rel. Smith v. McFarline (1900), 50 App. Div. 98, 63 N. Y. Supp. 622; People ex rel. Crouse v. Leavitt (1891), 39 St. Rep. 716, 15 N. Y. Supp. 619; Jacoby v. Payson (1895), 66 St. Rep. 439; 32 N. Y. Supp. 1082; People v. Dando (1886), 14 Daly 69.

§ 853. Commitment of defendant during examination.

During the examination, and until the defendant is discharged

by the magistrate, he must remain in the custody of the officer who arrested him, unless an undertaking have been given for his appearance, as provided in sections eight hundred and forty-four and eight hundred and forty-nine; and when committed to prison he must be actually confined therein. (Amended by L. 1882, ch. 360.)

Derivation: 1 R. S. 645, § 17.
People v. Dando (1886), 14 Daly 69.

§ 854. Proceedings by magistrate when security is given by defendant on arrest out of the county.

When security taken out of the county, for the appearance of the defendant at the county court, as provided in section eight hundred and forty-four, is returned to the magistrate who issued the warrant, he must associate with himself another magistrate of the same county, and the magistrates thus associated must proceed as provided in sections eight hundred and forty-eight to eight hundred and fifty, both inclusive. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 645, § 18.

§ 855. Examination in such case, and order thereon.

The examination may be had and the order of affiliation made in the absence of the defendant, unless, before the order is made, he require of the magistrate issuing the warrant that the examination be had in his presence, in which case the examination must be had as if the defendant had originally appeared.

Derivation: 1 R. S. 646, § 19.

§ 856. Magistrates may compel mother to disclose the father of the bastard; proceedings if she refuse.

In making an examination authorized by this chapter, the magistrate issuing the warrant, or the magistrates making the examination, may compel the mother of a bastard, chargeable to a county, city or town, or a woman pregnant of a child likely to be born such, to disclose the name of the father of the bastard; or if she refuse to do so, may, by a warrant setting forth the cause thereof, at the expiration of one month from her delivery, if sufficiently recovered, commit her to the county jail, or, in

the city of New York, to the city prison of that city, until she disclose the name of the father.

Derivation: 1 R. S. 646, § 20.

§ 857. If mother possess property, two magistrates may make an order that she pay for the support of the child.

If the mother of a bastard, chargeable, or likely to become chargeable, as provided in section eight hundred and forty, be possessed of property in her own right, any two magistrates of the county or city where she is, on the application of any of the officers mentioned in that section, must examine into the matter, and may make an order charging the mother with the payment of money weekly, or otherwise, for the support of the bastard.

Derivation: 1 R. S. 646, § 21.

§ 858. If she do not comply, she must be committed, or discharged on undertaking.

If, after service of the order upon the mother, she do not comply therewith, she must be committed to the county jail, or in the city of New York, to the city prison of that city, until she comply, or enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect that she will appear at the next term of the county court of the county, to answer the matters stated in the order, and obey its order thereon, or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrates. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 646, § 22.

People v. Schildwachter (1895), 34 N. Y. Supp. 352, 87 Hun 367.

§ 859. Magistrates may reduce amount directed to be paid by the father or mother; county court may reduce or increase it.

The magistrates, who have made an order against the father or mother of a bastard, as provided in sections eight hundred and fifty and eight hundred and fifty-seven, may, from time to time, for good cause, reduce the amount therein directed to be paid, and upon the application of any of the officers mentioned in section eight hundred and forty, the county court of the county, *upon ten days' notice* to those officers or to the father and mother

of the bastard, may reduce or increase the amount so directed to be paid. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 646, 23.

People v. Dando (1886), 14 Daly 69, 20 Abb. N. C. 245; People v. Crispi (1905), 106 App. Div. 176, 177, 178, 94 N. Y. Supp. 372.

§ 860. Proceedings against the father or mother absconding from their place of residence.

If the father or mother of a bastard, or of a child likely to be born such, abscond from their place of residence, leaving the bastard chargeable, or likely to become chargeable to the public, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the bastard was born, or is likely to be born, may apply to any two magistrates of the city or county where any property, real or personal, of the father or mother may be, for authority to take the same. Upon due proof of the facts on oath, to the satisfaction of the magistrates, they must issue their warrant, and proceed thereon in the manner provided in title eight of this part, in relation to persons absconding and leaving their children chargeable to the public.

Derivation: 1 R. S. 652, § 52.

CHAPTER II.

APPEALS FROM THE ORDERS OF MAGISTRATES, RESPECTING BASTARDS.

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878. Father or mother unable to support the bastard, may be discharged.
879. Notice, before discharge, and examination of the matter.
880. Party cannot be discharged, but by the court.

§ 861. Who may appeal, and in what cases.

A person deeming himself aggrieved by the order of two magistrates, made pursuant to the last chapter, may appeal therefrom to the next term of the county court of the county; except that a person who has executed an undertaking to obey an order of filiation, and indemnify the public, as provided in section eight hundred and fifty-one, cannot appeal from any other part of the order mentioned in section eight hundred and fifty, than that which fixes the weekly or other allowance to be paid. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 647, § 24.

McElroy v. Albany Savings Bank (1896), 8 App. Div. 46, 40 N. Y. Supp. 423;

People ex rel. Smith v. McFarline (1900), 50 App. Div. 98, 63 N. Y. Supp. 622; Keller v. Cleary (1900), 56 App. Div. 469, 67 N. Y. Supp. 862; People ex rel. Comrs. v. Benson (1901), 63 App. Div. 144, 71 N. Y. Supp. 274; Chester v. Broderick (1891), 60 Hun 564, 15 N. Y. Supp. 353; People ex rel. Comrs. v. Schildwachter (1895), 87 Hun 367, 34 N. Y. Supp. 352; People v. Bd. of Supervisors (1893), 24 N. Y. Supp. 398; People ex rel. Comrs. v. Dando (1886), 14 Daly 69, 20 Abb. N. C. 245.

§ 862. Appeal, how taken.

When the father or mother of the bastard has entered into an undertaking for appearance at the next term of the county court of the county, as provided in sections eight hundred and fifty-one and eight hundred and fifty-eight, it is an appeal from the order of filiation or maintenance; and no other notice thereof is necessary. In any other case, the appeal is taken, by a written notice of at least ten days before the court, to the magistrates who made the order, and to the party affected thereby, or to the officer at whose instance it was obtained. (Amended by L. 1895, ch. 880.)

Derivation: Same as § 861.

People ex rel. Smith v. McFarline (1900), 50 App. Div. 98; 63 N. Y. Supp. 622; People ex rel. Downs v. Lindsay (1889), 25 St. Rep. 519, 6 N. Y. Supp. 38; Board of Comrs. v. McCloskey (1897), 15 App. Div. 44, 44 N. Y. Supp. 111; People ex rel. Comrs. v. Dando (1886), 14 Daly 69; 20 Abb. N. C. 245.

§ 863. Papers to be transmitted by magistrates, to county court.

The magistrates receiving an undertaking for appearance at the county court, must transmit it to the court, before its opening, with a certified copy of the order appealed from. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 647, § 26.

People ex rel. Kenfield v. Lyon (1894), 83 Hun 307, 31 N. Y. Supp. 942; People ex rel. Comrs. v. Dando (1886), 14 Daly 69, 20 Abb. N. C. 245.

§ 864. Court to hear the case; evidence on hearing.

The court must immediately, or at any other time it may appoint, proceed to hear the allegations and proofs of the parties; and the party in whose favor the order was made, must support it by evidence. If the mother of the bastard is dead or insane, her testimony on the examination before the magistrate is receivable in evidence.

Derivation: 1 R. S. 647, § 28.

Board, etc. v. McCloskey (1897), 15 App. Div. 44, 44 N. Y. Supp. 111; People

ex rel. Smith v. McFarline (1900), 50 App. Div. 99, 63 N. Y. Supp. 622; Keller v. Cleary (1900), 56 App. Div. 469, 67 N. Y. Supp. 862; People ex rel. Comrs. v. Schildwachter (1895), 87 Hun 365, 34 N. Y. Supp. 352.

§ 865. Court may affirm, vacate or modify the order, or adjourn the hearing till the bastard be born.

The court may affirm or vacate an order of filiation or maintenance, or may reduce or increase the sum ordered to be paid for the support of the bastard or its mother; and, disregarding defects in form in the order, must amend it according to the fact. If, when the appeal is heard, the bastard be not born, the court may adjourn the hearing until it be born, and in that case, must take an undertaking from the party appealing, for his appearance, in such sum and with such sureties as the court may deem sufficient.

Derivation: 1 R. S. 648, § 29.

Lester v. Worden (1896), 8 App. Div. 218, 40 N. Y. Supp. 486, Keller v. Cleary (1900), 56 App. Div. 469, 67 N. Y. Supp. 862.

§ 866. If woman be not pregnant, or be married before her delivery, or the child be not born alive, defendant to be discharged.

If the woman alleged to be pregnant, be not so, or be married before her delivery, or the child be not born alive, the defendant must be discharged from custody or from the obligation of his undertaking, either by the court or magistrates, upon that fact being made to appear.

Derivation: 1 R. S. 648, § 30.

People ex rel. Smith v. McFarline (1900), 50 App. Div. 99; 63 N. Y. Supp. 622; Burnham v. Tryon (1906), 112 App. Div. 770, 98 N. Y. Supp. 600.

§ 867. Order of the court, on affirmance.

If, upon the hearing of the appeal, the county court affirm an order of filiation or maintenance, it must require the defendant to enter into an undertaking, with sufficient sureties approved by the court, to the effect that he will pay, weekly or otherwise, according to the order as made by the magistrates or modified by the court, the sum directed for the support of the bastard, and of the mother during her confinement and recovery; and that he will indemnify the county, and town or city where the bastard was or may be born [as the case may be], and every other county, *town or city,* which may have been put to expense for the support

of the child or of its mother during her confinement and recovery against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the court. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 648, § 31.

§ 868. Commitment of defendant, if he fail to give undertaking.

If, on judgment of affirmance, the defendant do not enter into an undertaking, as provided in the last section, he must be committed to the county jail, or in the city of New York, to the city prison of that city, until he do so, or be discharged by the court.

Derivation: 1 R. S. 649, § 32.

§ 869. Undertaking for appearance on appeal, when forfeited.

The undertaking for the appearance of the defendant at the county court, upon an appeal, is forfeited by his neglect to appear, or to give the undertaking mentioned in the last two sections, unless he be discharged by the court. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 649, § 33.

§ 870. When mother bound to appear at the county court to proceed as upon an appeal.

When the mother of a bastard is bound to appear at the county court, or is committed as provided in section eight hundred and fifty-eight, the court must proceed in respect to the matter in the same manner as upon an appeal. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 649, § 34.

§ 871. When the court may make an order against the mother, for the support of the bastard.

If the court be satisfied that the mother has property in her own right, sufficient to enable her to support the bastard or contribute to its support, it must confirm the order mentioned in section eight hundred and fifty-seven, or may vary the sum or-

dered to be paid weekly or otherwise; or if not, it must discharge her from custody or from the obligation of her undertaking.

Derivation: 1 R. S. 649, § 35.

§ 872. Proceedings against the mother, on affirmance or modification of the order of the magistrates.

If the court affirm or modify the order, as provided in the last section, it must require the defendant to enter into an undertaking, with sufficient sureties approved by the court, to the effect that she will pay, weekly or otherwise, according to the order, as made by the magistrates or modified by the court, the sum directed for the support of the bastard, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the court. If the undertaking be not given she must be committed in the manner provided in section eight hundred and sixty-eight.

Derivation: 1 R. S. 649, § 36.

Burnham v. Tryon (1906), 112 App. Div. 770, 98 N. Y. Supp. 600.

§ 873. Costs on appeal, when awarded and how paid.

The court must award costs to the party in whose favor an appeal is determined. When awarded against county superintendents or overseers of the poor of a town, not liable for the support of its own poor, they must be paid by the county treasurer, on delivering to him a certified copy of the order and of the taxed costs, and must be charged by him to the town in the same county, liable to support the bastard, or if there be none, to the county. In the city of New York, when costs are awarded upon an appeal, to the person charged as the father or mother of the bastard, they must, upon the production of similar vouchers, be paid by the comptroller of that city, and charged to the appropriation made to the commissioners of charities and corrections thereof.

Derivation: 1 R. S. 649, § 37.

People ex rel. Crouse v. Supervisors (1893), 70 Hun 564, 24 N. Y. Supp. 398; People ex rel. Commissioners v. Abrahams (1905), 105 App. Div. 496, 499, 94 N. Y. Supp. 296.

§ 874. Cost on appeal, when awarded and how paid.

In other cases, the payment of the costs may be enforced by the court, as in a civil action. If the party against whom they *are awarded, reside* out of the jurisdiction of the court, an action

may be brought on the order, by the party entitled to the costs, in which the production of a certified copy of the order and of the taxed costs is conclusive evidence.

Derivation: 1 R. S. 650, § 38.
People ex rel. Crouse v. Supervisor (1893), 70 Hun 564, 24 N. Y. Supp. 398.

§ 875. Proceeding when an order of filiation vacated.

If the court vacate an order of filiation for any other cause than upon the merits, it must proceed, and may make an original order of filiation, in the manner prescribed in the second subdivision of section eight hundred and fifty, or bind the person charged in an undertaking, in a sum and with sureties approved by the court, to appear at the next term of the county court. (Amended by L. 1895, ch. 880; L. 1909, ch. 880; L. 1909, ch. 66, § 5, in effect Feb. 17, 1909.)

Derivation: 1 R. S. 650, § 39.

§ 876. If order of filiation be vacated, except on the merits, magistrates may proceed anew.

If the order be vacated for any other cause than on the merits, and the person charged be bound as provided in the last section, the same proceedings may be had by the magistrate for the apprehension of the defendant, and for making an order of filiation, and for the commitment of the defendant for not giving an undertaking, as are authorized in the first instance. And the same proceedings must be subsequently had in all respects.

Derivation: 1 R. S. 650, § 40.

§ 877. Court to inquire into circumstances of father or mother committed for not giving undertaking to support the bastard.

When a person is committed to prison, charged as the father of a bastard, or of a child likely to be born a bastard, and when the mother of a bastard is so committed for not giving an undertaking to support the bastard, or to indemnify the public, the court must inquire, from time to time, into the circumstances and ability of the father or mother to support the bastard and to procure security therefor.

Derivation: 1 R. S. 650, § 41.
People v. Cowie (1895), 88 Hun 500, 34 N. Y. Supp. 888.

§ 878. Father or mother unable to support the bastard may be discharged.

If the court be at any time satisfied that the father or mother is wholly unable to support the bastard, or to contribute to its support, or to procure security therefor, it may, in its discretion, order the father or mother to be discharged from imprisonment; but if it shall thereafter at any time appear to the satisfaction of the court of general sessions of the county of New York, or to the county court of any other county, that the defendant has become and is able to contribute to the support of the bastard, and fails so to do, the court may revoke and vacate the aforesaid order discharging the defendant from arrest, and may order him to be rearrested and may require him to give a new undertaking in the manner provided in subdivision one of section eight hundred and fifty-one of the code of criminal procedure, and upon his failure to give such undertaking shall commit him to jail in the manner provided in section eight hundred and fifty-two of the code of criminal procedure. (Amended by L. 1904, ch. 520; in effect Sept. 1, 1904.)

Derivation: 1 R. S. 650, § 42.

§ 879. Notice before discharge, and examination of the matter.

Before granting the order the court must be satisfied that reasonable notice has been given to the overseers of the poor, or to the county superintendents or chief officers of the alms-house, at whose instance the party was committed, of the intention to apply for a discharge, and must hear the allegations and proofs of the superintendents, overseers or officers, and may examine the party applying on oath respecting the subject of the application.

Derivation: 1 R. S. 650, § 43.

§ 880. Party cannot be discharged, but by the court.

A person committed, as provided in section eight hundred and seventy-seven, cannot be discharged from imprisonment, except by the county court of the county. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 651, § 44.

CHAPTER III.

ENFORCEMENT OF THE UNDERTAKING FOR THE SUPPORT OF THE BASTARD OR ITS MOTHER, OR FOR APPEARANCE ON APPEAL.

SECTION 881. Court to order prosecution of undertaking, when forfeited; by whom prosecuted.
882. In whose name undertaking to be prosecuted.
883. Evidence in the action, and measure of damages.
884. For a subsequent breach of the undertaking, new action may be brought.
885. Costs, how recovered, when awarded against the plaintiff.
886. Action may be maintained on the order, etc.

§ 881. Court to order prosecution of undertaking, when forfeited; by whom prosecuted.

If an undertaking for the appearance at the county court, of a person charged as the father or mother of a bastard, be forfeited, the court may order it to be prosecuted; and the sum mentioned therein may be recovered, and when collected, must, except in the city of New York, be paid to the county treasurer, and by him credited to the town in the same county, liable to the support of the bastard, or if there be none, to the county. In the city of New York, the court must order the undertaking to be prosecuted by the commissioners of charities and corrections, and when collected, it must be paid into the city treasury. In every other county, it must be prosecuted by the district attorney. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 651, § 46.

Tillotson v. Martin (1886), 40 Hun 322; Standring v. Moore (1895), 74 St. Rep. 494, 38 N. Y. Supp. 818; People ex rel. Comrs. v. Dando (1886), 14 Daly 69, 20 Abb. N. C. 245.

§ 882. In whose name undertaking to be prosecuted.

When an undertaking to obey an order, in relation to the support of a bastard, or of a child likely to be born a bastard, or of its mother, is forfeited, it may be prosecuted in the name of the county superintendents of the county or the overseers of the poor of the town, which was liable for the support of the bastard, or

which may have incurred any expense in the support of the bastard, or of its mother, during her confinement and recovery; or in the city of New York, in the name of the corporation of that city.

Derivation: 1 R. S. 651, § 47.

Tillotson v. Martin (1886), 40 Hun 321; Standring v. Moore (1895), 74 St. Rep. 494, 38 N. Y. Supp. 818; People ex rel. Comrs. v. Dando (1886), 14 Daly 68, 20 Abb. N. C. 245.

§ 883. Evidence in the action, and measure of damages.

In the action mentioned in the last section, it is not necessary to prove the actual payment of money by a county superintendent, overseer of the poor, officer of an alms-house, or other person; but the neglect to pay a sum ordered to be paid by competent authority, for the support of the bastard, or of its mother, is a breach of the undertaking, and the measure of the damages is the sum ordered to be paid, and which was withheld at the time of the commencement of the action, with interest thereon.

Derivation: 1 R. S. 651, § 48.

Tillotson v. Martin (1886), 40 Hun 321; Mayor, etc. v. Celia (1898), 23 Misc. 140, 50 N. Y. Supp. 637; City of New York v. Buechel (1902), 71 App. Div. 507, 75 N. Y. Supp. 833.

§ 884. For a subsequent breach of the undertaking new action may be brought.

For a breach of the undertaking, after the recovery of damages or the commencement of an action, another action may, in the same manner, be brought. The money collected upon the undertaking must be paid, and credited, in the manner provided in section eight hundred and eighty-one.

Derivation: 1 R. S. 652, § 49.

Tillotson v. Martin (1886), 40 Hun 321.

§ 885. Costs, how recovered, when awarded against the plaintiff.

If, in the action, costs be awarded against the plaintiffs, they may be recovered, as follows:

1. If against the corporation of the city of New York, in the same manner as in any other action;

2. If against county superintendents or overseers of the poor, they must, upon the delivery of a transcript of the judgment, be

paid by the county treasurer, and by him charged to the town in the same county, liable for the support of the bastard, or if there be none, to the county.

Derivation: 1 R. S. 652, § 50.

§ 886. Action may be maintained on the order, etc.

An action may be maintained by the parties authorized by section eight hundred and eighty-two, upon an order made by two magistrates, or by a county court, for the payment of a sum weekly or otherwise, for the support of the bastard or its mother, notwithstanding an undertaking may have been given to comply with the order; and in case of the death of the person against whom the order was made, an action may be maintained thereon against his executors or administrators. But when an undertaking is given to appear at the next term of the county court, no action can be brought on the order until it is affirmed by the court. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 652, § 51.

TITLE VI.

OF PROCEEDINGS RESPECTING VAGRANTS.

SECTION 887. Who are vagrants.
887a. Tramp defined.
888. Proceedings before magistrate.
889. Examination as to residence.
890. Peace officers, when required by any person, to carry vagrant before a magistrate for examination.
891. Vagrant, when to be convicted; form of certificate of conviction.
892. Certificate to constitute record of conviction, and to be filed; commitment of vagrant.
893. ———.
894. Peace officers to arest and pursue a person disguised, and take him before a magistrate.
895. Private citizen may do so, without warrant.
896. Peace officer may require aid; duty of persons required to aid him.
897. Neglect or refusal to aid peace officer, without lawful cause, a misdemeanor; punishment.
898. Magistrate may depute an elector of the county to make arrest of person disguised; if his name be not known, fictitious name may be used.
898a. Summary punishment of professional criminals.

§ 887. Who are vagrants.

The following persons are vagrants:

1. A person who, not having visible means to maintain himself, lives without employment;

2. A person who, being an habitual drunkard, abandons, neglects or refuses to aid in the support of his family;

3. A person who has contracted an infectious or other disease, in the practice of drunkenness or debauchery, requiring charitable aid to restore him to health;

4. A common prostitute who has no lawful employment, whereby to maintain herself;

5. A person wandering abroad and begging, or who goes about from door to door, or places himself in the streets, highways, passages, or other public places, to beg or receive alms;

6. *A person* wandering abroad and lodging in taverns, grocer-

ies, ale-houses, watch or station-houses, out-houses, market places, sheds, stables, barns or uninhabited buildings, or in the open air, and not giving a good account of himself;

7. A person, who, having his face painted, discolored, covered or concealed, or being otherwise disguised, in a manner calculated to prevent his being identified, appears in a road or public highway, or in a field, lot, wood or inclosure;

8. Any child between the age of five and fourteen, having sufficient bodily health and mental capacity to attend the public school, found wandering in the streets or lanes of any city or incorporated village, a truant, without any lawful occupation;

9. [Subdivision repealed by L. 1910, ch. 381, in effect Sept. 1, 1910.

10. A person who has been more than once convicted as a pickpocket, thief, or burglar, and having no visible means of support, found loitering about steamboat landings, railroad stations, banking institutions, crowded thoroughfares, cars, omnibuses, hotels, or any public gatherings or assembly, and unable to give a satisfactory explanation of his presence. (Subdivision added by L. 1907, ch. 616.)

Derivation: 1 R. S. 682, § 1.

People v. Dickson (1890), 57 Hun 316; Tenant v. Dudley (1893), 22 N. Y. Supp. 877; People ex rel. Duntz v. Coon (1893), 51 St. Rep. 342, 22 N. Y. Supp. 865; People v. Cowie (1895), 69 St. Rep. 84, 34 N. Y. Supp. 888; Matter of Moses (1883), 1 Crim. Rep. 509; Matter of Braffett (1899), 27 Misc. 329, 57 N. Y. Supp. 890; People, etc. v. State Industrial School (1900), 33 Misc. 397, 67 N. Y. Supp. 674; People ex rel. Clark v. Keeper (1903), 176 N. Y. 474; People v. O'Neill (1907), 117 App. Div. 827, 102 N. Y. Supp. 988; People ex rel. Frank v. Davis (1903), 80 App. Div. 448, 456, 80 N. Y. Supp. 872; People ex rel. Stein v. Keeper (1904), 44 Misc. 124, 89 N. Y. Supp. 88; People ex rel. Foster v. The Warden (1903), 39 Misc. 700, 702, 104, 80 N. Y. Supp. 997; People ex rel. Clark v. State Reformatory (1902), 38 Misc. 241, 242, 77 N. Y. Supp. 151; People ex rel. Frank v. Keeper (1902), 38 Misc. 233, 240, 77 N. Y. Supp. 145.

§ 887-a. Tramp defined.

A tramp is any person, not blind, over sixteen years of age, and who has not resided in the county in which he may be at any time for a period of six months prior thereto, who

1. Not having visible means to maintain himself, lives without employment; or

2. Wanders abroad and begs, or goes about from door to door, or places himself in the streets, highways, passages or public places to beg or receive alms; or

3. Wanders abroad and lodges in taverns, groceries, alehouses, watch or station houses, outhouses, market places, sheds, stables, barns or uninhabited buildings, or in the open air, and does not give a good account of himself. (Added by L. 1898, ch. 664.)

Derivation: L. 1898, chap. 664.

Not appliable to cities of the first and second class. L. 1898, ch. 664, § 6.

§ 888. Proceedings before magistrate.

When complaint is made to any magistrate by any citizen or peace officer against any vagrant under subdivision eight of the last section, such magistrate must cause a peace officer to bring such child before him for examination, and shall also cause the parent, guardian or master of such child, if the child has any, to be summoned to attend such examination.

If, thereon, the complaint shall be satisfactorily established, the magistrate must require the parent, guardian or master to enter into an engagement in writing to the corporate authorities of the city or village, that he will restrain such child from so wandering about, will keep him in his own premises or in some lawful occupation, and will cause him to be sent to some school, at least four months in each year, until he become fourteen years old.

The magistrate may, in his discretion, require security for the faithful performance of such engagement.

If the child has no parent, guardian or master, or none can be found, or if the parent, guardian or master refuse or neglect, within a reasonable time, to enter into such engagement, and to give such security if required, the magistrate shall make the like disposition of such child as is authorized to be made by section four hundred and eighty-six of the Penal Law, of children coming within the descriptions therein mentioned. (Amended by L. 1888, ch. 220; L. 1909, chap. 66, § 5. In effect Feb. 17, 1909.)

Derivation: L. 1853, ch. 185.

People v. Dickson (1890), 57 Hun 316; People, etc. v. State Industrial School *(1900), 88 Misc. 397,* 39 St. Rep. 497, 67 N. Y. Supp. 674.

§ 889. Examination as to residence.

When complaint is made to any magistrate by any citizen or peace officer against a person under sub-divisions one, five or six of section eight hundred and eighty-seven, the magistrate must, upon the examination of such person, cause testimony to be taken as to his residence, and if it appears that such person has not resided in the county for a period of six months prior to his arrest, such magistrate shall not commit such person as a vagrant, as provided by this article; but if he finds that such person is guilty of an offense charged in one of such subdivisions, and such person is not blind or under sixteen years of age, the magistrate shall adjudge him to be a tramp, and commit him to a penitentiary as required by law. On such examination the uncorroborated testimony of the defendant as to his place of residence shall not be deemed sufficient proof thereof. (Added by L. 1898, ch. 664. Amended by L. 1909, ch. 66, § 5. In effect Feb. 17, 1909.)

Derivation: L. 1898, ch. 664.

People v. Sadler (1884), 97 N. Y. 146; People v. Iverson (1899), 46 App. Div. 301, 61 N. Y. Supp. 220; People ex rel. Comrs. v. Cullen (1896), 74 St. Rep. 611, 40 N. Y. Supp. 1; Shimmel v. Morse (1900), 30 Misc. 259, 63 N. Y. Supp. 322.

§ 890. Peace officers, when required by any person, to carry vagrant before a magistrate for examination.

A peace officer must, when required by any person, take a vagrant before a justice of the peace or police justice of the same city, village or town, or before the mayor, recorder, or city judge, or judge of the general sessions of the same city, for the purpose of examination.

Derivation: 1 R. S. 682, § 2.

People v. Fuerst (1895), 69 St. Rep. 207, 34 N. Y. Supp. 1115.

§ 891. Vagrant, when to be convicted; form of certificate of conviction.

If the magistrate be satisfied, from the confession of the person so brought before him, or by competent testimony, that he is a vagrant, and has resided in the county for a period of six months prior to his arrest, he must convict him, and must make and sign, with his name of office, a certificate substantially in the following form:

"I certify that A. B., having been brought before me, charged with being a vagrant, I have duly examined the charge, and that

upon his own confession in my presence (or 'upon the testimony of C. D.,' et cetera, naming the witnesses), by which it appears that he is a person (pursuing the description contained in the subdivision of section eight hundred and eighty-seven, which is appropriate to the case), and (if convicted under subdivisions one, five or six of section eight hundred and eighty-seven) that he has resided in the county of ..... for a period of six months immediately prior to his arrest, I have adjudged that he is a vagrant. Dated at the town (or city) of ....., the ..... day of ..... 18..

"E. F.,

"Justice of the peace of the town of ....."" (or as the case be).

(Amended by L. 1898, ch. 664.)

Derivation: 1 R. S. 632, § 3.

People ex rel. Donohue v. Walton (1901), 35 Misc. 321, 71 N. Y. Supp. 85.

§ 892. Certificate to constitute record of conviction, and to be filed; commitment of vagrants.

The magistrate must immediately cause the certificate which constitutes the record of conviction, together with the testimony taken before him as to the residence of such vagrant, to be filed in the office of the clerk of the county, and must, by a warrant signed by him, with his name of office, commit the vagrant, for not exceeding six months at hard labor to the county jail. In those counties of the state where the distinction between county poor and town poor is maintained, the expense of the conviction and maintenance during the commitment of any vagrant committed to the county jail, who shall, at the time of such commitment, have obtained a legal settlement in one of the towns of the county in which said persons shall be convicted, shall be a charge upon the town where they may reside at the time of such commitment. (Amended by L. 1886, ch. 657; L. 1898, ch. 664; L. 1911, ch. 689, in effect July 18, 1911.)

Derivation: 1 R. S. 633, § 3.

Matter of Dorfmann (1887), 21 Abb. N. C. 296; People ex rel. Donohue v. Walton (1901), 35 Misc. 321, 71 N. Y. Supp. 85.

§ 893.

Repealed, L. 1888, chap. 220, § 5.

§ 894. Peace officers to arrest and pursue a person disguised, and take him before a magistrate.

It is the duty of every peace officer of the county, city, village, or town, where a person described in the seventh subdivision of section eight hundred and eighty-seven is found, to arrest and take him before a magistrate mentioned in section eight hundred and eighty-eight, to be proceeded against as a vagrant. (Amended by L. 1882, ch. 360.)

Derivation: L. 1845, ch. 3, § 2.
People v. Fuerst (1895), 69 St. Rep. 207, 34 N. Y. Supp. 1115.

§ 895. Private citizens may do so without warrant.

A private citizen of the county may also, without warrant, exercise the powers conferred upon a peace officer by the last section.

Derivation: Same as § 894.
People v. Fuerst (1895), 69 St. Rep. 207, 34 N. Y. Supp. 1115.

§ 896. Peace officers may require aid; duty of persons required to aid him.

In the execution of the duties imposed by section eight hundred and ninety-four the peace officer may command the aid of as many male inhabitants of his county, city, village or town as he may think proper; and a citizen so commanded may provide himself, or be provided with, such means and weapons as the officer giving the command may designate.

Derivation: L. 1845, ch. 3, § 3.

§ 897. Neglect or refusal to aid peace officer, without cause, a misdemeanor; punishment.

A person commanded to aid the officer, as prescribed in the last section, and who without lawful cause refuses or neglects to do so, is guilty of a misdemeanor, and is punishable by a fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding one year, or both.

Derivation: L. 1845, ch. 3, § 4.

§ 898. Magistrate may depute an elector of the county to make arrest of person disguised; if his name be not known, fictitious name may be used.

A magistrate to whom complaint is made against a person charged as a vagrant, as described in the seventh subdivision of section eight hundred and eighty-seven, may, by a warrant signed by him, with his name of office, depute an elector of the county to arrest and bring the vagrant before him to answer the complaint; and if the name of the person complained of be not known, he may be described in the warrant and in all subsequent proceedings thereon, by a fictitious name.

Derivation: L. 1845, ch. 8, § 5.

§ 898-a. Summary punishment of professional criminals.

If any person shall be charged on oath or affirmation before any police magistrate or justice of the peace in this state with being a professional thief, burglar, pickpocket, counterfeiter or forger, or shall have been arrested by the police authorities at any steamboat landing, railroad depot, church, banking institution, brokers' office, place of public amusement, auction room, store, auction sale in private residences, passenger car, hotel or restaurant, or at any other gathering of people, whether few or many, and if it shall be proven to the satisfaction of any such magistrate or justice of the peace, by sufficient testimony, that he or she was frequenting or attending such place or places for an unlawful purpose, and that he or she has at some time been convicted of any of the crimes herein named, he or she shall be deemed a disorderly person, and upon conviction after trial shall be committed by the said magistrate or justice of the peace to the penitentiary, in counties where there is a penitentiary, for a term not exceeding one hundred days, there to be kept at hard labor, and in counties where there is no penitentiary, or where no contract exists with any authorities of any penitentiary in the state, then to the county jail of said county, for a term not exceeding one hundred days, or, in the discretion of any such police magistrate or justice of the peace, he or she shall be required to enter security for his or her good behavior for a period not exceeding one year. Any person who may or shall feel aggrieved at any such act, judgment or determination *of any such police* magistrate or justice of the peace, pursuant

to the provision of this section, may apply to any judge or justice of any court having the power to issue a writ of habeas corpus for the issuance of said writ, and upon return thereof there shall be a rehearing of evidence, and the judge or justice may either discharge, modify or confirm the commitment. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: L. 1873, ch. 857, §§ 1, 2.

TITLE VII.

OF PROCEEDINGS RESPECTING DISORDERLY PERSONS.

SECTION 899. Who are disorderly persons.
900. On complaint, warrant to be issued.
901. On confession or proof that he is a disorderly person, security to be required.
902. If security given, defendant to be discharged; if not, to be convicted: form of certificate.
903. Certificate, to constitute record of conviction, and to be filed; commitment thereon; probation.
904. Undertaking, when forfeited.
905. How prosecuted, and proceeds how applied.
906. When new security may be required, or defendant committed after recovery on undertaking.
907. Defendant committed for not giving security, how discharged.
908. Keeper of prison, to return list of disorderly persons, etc.
909. Examination of the case by the court.
910. Court may discharge, place on probation, or authorize the binding out of disorderly person.
911. Court may also commit him to prison; nature and duration of imprisonment.
912. Order to procure materials and implements, and to compel him to work.
913. Expense of materials or implements, how paid for, and proceeds of labor, how disposed of.

§ 899. Who are disorderly persons.

The following are disorderly persons:

1. Persons who actually abandon their wives or children, without adequate support, or leave them in danger of becoming a burden upon the public, or who neglect to provide for them according to their means;

2. Persons who threaten to run away and leave their wives or children a burden upon the public;

3. Persons pretending to tell fortunes, or where lost or stolen goods may be found;

4. Keepers of bawdy houses or houses for the resort of prostitutes, drunkards, tipplers, gamesters, habitual criminals, or other disorderly persons;

5. *Persons* who have no visible profession or calling, by which

to maintain themselves, but who do so, for the most part, by gaming;

6. Jugglers, common showmen and mountebanks, who exhibit or perform for profit, puppet shows, wire or rope dancers or other idle shows, acts or feats;

7. Persons who keep, in a public highway or place, an apparatus or device for the purpose of gaming, or who go about exhibiting tricks or gaming, therewith;

8. Persons who play, in a public highway or place, with cards, dice or any other apparatus or device for gaming;

9. Habitual criminals within the provisions of this Code.

Derivation: 1 R. S. 688, § 1.

People, etc. v. Cullen (1896), 7 App. Div. 120, 40 N. Y. Supp. 1; People ex rel. Scherer v. Walsh (1884), 33 Hun 346, 2 Crim. Rep. 326; Lutes v. Shelley (1886), 40 Hun 199; People v. Cutler (1882), 28 Hun 466; People v. Frederick (1894), 78 Hun 36, 60 St. Rep. 195, 28 N. Y. Supp. 1002; People v. Klock (1888), 16 St. Rep. 565; Buckley v. Boyce (1888), 17 St. Rep. 940; McInbae v. Rey (1893), 52 St. Rep. 485, 3 Misc. 550, 23 N. Y. Supp. 16; People v. Fuerst (1895), 69 St. Rep. 206, 34 N. Y. Supp. 1115; People v. Harris (1891), 14 N. Y. Supp. 830; Hand v. Shaw (1895), 34 N. Y. Supp. 115; People v. Karlsive (1896), 37 N. Y. Supp. 481; Matter of McMahon (1883), 1 Crim. Rep. 60; People v. Miller (1885), 3 Crim. Rep. 480; Manning v. Wells (1894), 8 Misc. 650, 61 St. Rep. 61, 29 N. Y. Supp. 1044; People v. Brady (1895), 13 Misc. 294, 34 N. Y. Supp. 1118; People v. Fuerst (1895), 13 Misc. 304, 34 N. Y. Supp. 1115; People ex rel. Shortell v. Markell (1897), 20 Misc. 150, 45 N. Y. Supp. 904; Lyman v. Brucker (1899), 26 Misc. 597, 56 N. Y. Supp. 767; People ex rel. Sloane v. Fallon (1899), 27 Misc. 20, 13 Crim. Rep. 499, 57 N. Y. Supp. 991; People v. Champlin (1907), 120 App. Div. 510; Weigand v. Weigand (1905), 103 App. Div. 42, 48, 92 N. Y. Supp. 679; People v. O'Neill (1907), 117 App. Div. 827, 102 N. Y. Supp. 988; People v. Schermerhorn (1908), 59 Misc. 147, 112 N. Y. Supp. 223; People ex rel. Smith v. State Reformatory (1902), 38 Misc. 243, 245, 77 N. Y. Supp. 159; People ex rel. Frank v. Keeper (1902), 38 Misc. 233, 240, 77 N. Y. Supp. 145; Matter of Newkirk (1902), 37 Misc. 404, 405, 75 N. Y. Supp. 777; People v. De Wolf (1909), 133 App. Div. 879, 118 N. Y. Supp. 75.

§ 900. On complaint, warrant to be issued.

Upon complaint on oath, to a justice of the peace or police justice of a city, village or town, or to the mayor, recorder, city judge or judge of the general sessions of the city, against a person, as being disorderly, the magistrate must issue a warrant, signed by him, with his name of office, requiring a peace officer to arrest the defendant, and bring him before the magistrate for examination.

Derivation: 1 R. S. 688, § 2.

Comrs. of Charities v. Hammill (1884), 33 Hun 348; People ex rel. Lichtenstein

v. Hodgson (1890), 12 N. Y. Supp. 699, 35 St. Rep. 982; Mayor, etc. v. Ehrsam (1891), 16 N. Y. Supp. 527; Buckley v. Boyce (1888), 17 St. Rep. 940; People v. Meyer (1895), 12 Misc. 613, 33 N. Y. Supp. 1123; People v. Fuerst (1895), 13 Misc. 304, 69 St. Rep. 206, 34 N. Y. Supp. 1115; People ex rel. Sloane v. Fallon (1899), 27 Misc. 20, 57 N. Y. Supp. 931; People ex rel. Keller v. Powers (1901), 35 Misc. 778; 72 N. Y. Supp. 383.

§ 901. On confession or proof that he is a disorderly person, security to be required.

If the magistrate be satisfied, from the confession of the defendant, or by competent testimony, that he is a disorderly person, he may require that the person charged give security, by a written undertaking, with one or more sureties approved by the magistrate, to the following effect:

1. If he be a person described in the first or second subdivision of section eight hundred and ninety-nine, that he will pay to the county superintendent of the poor or to the overseer of the poor of the town, city or village, or to a society for the prevention of cruelty to children, weekly for the space of one year thereafter a reasonable sum of money to be specified by the magistrate for the support of his wife or children;

2. In all other cases, that he will be of good behavior for the space of one year;

Or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrate. (Subd. 1, amended by L. 1909, ch. 506. In effect Sept. 1, 1909.)

Derivation: 1 R. S. 638, § 2.

Comrs. of Charities v. Hammill (1884), 33 Hun, 348; Lutes v. Shelley (1886), 40 Hun, 198; Buckley v. Boyce (1888), 17 St. Rep. 940; People v. Thompson (1891), 38 St. Rep. 317, 14 N. Y. Supp. 819; Breichbiel v. Powles (1891), 39 St. Rep. 857, 15 N. Y. Supp. 465; People v. Harris (1891), 14 N. Y. Supp. 830; People v. Brady (1895), 13 Misc. 294, 34 N. Y. Supp. 1118; People ex rel. Keller v. Powers (1901), 35 Misc. 778, 72 N. Y. Supp. 383; People v. Champlin (1901), 120 App. Div. 510; Goetting v. Normoyle (1908), 191 N. Y. 375, 119 App. Div. 145; Tully v. Lewitz (1906), 50 Misc. 353, 98 N. Y. Supp. 829; Keller v. Foleron (1901), 36 Misc. 534, 536, 73 N. Y. Supp. 951; People v. De Wolf (1909), 133 App. Div. 879, 118 N. Y. Supp. 75.

§ 902. If security given, defendant to be discharged; if not, to be convicted; form of certificate.

If the undtertaking be given, the defendant must be discharged. But if not, the magistrate must convict him as a disorderly person, and must make, and sign with his name of office, a certificate *in substantially* the following form:

"*I certify* that A. B., having been brought before me charged

with being a disorderly person, I have duly examined the charge, and that upon his own confession in my presence [or 'upon the testimony of C. D.,' etc., naming the witnesses], by which it appears that he is a [pursuing the description contained in the subdivision of section eight hundred and ninety-nine, which is appropriate to the case], I have adjudged that he is a disorderly person.

"Dated at the town [or 'city'] of , the day of , 18 .

"E. F.,

Justice of the peace of the town of

"[Or as the case may be.]"

Derivation: Same as § 901.

Cuniff v. Beecher (1895), 66 St. Rep. 400, 32 N. Y. Supp. 1067; People v. Fuerst (1895), 69 St. Rep. 206, 34 N. Y. Supp. 1115; People, etc. v. Sadler (1885), 3 Crim. Rep. 473; Goetting v. Normoyle (1908), 191 N. Y. 375; People v. Champlin (1907), 120 App. Div. 510; Tully v. Lewitz (1906), 50 Misc. 358, 98 N. Y. Supp. 829.

§ 903. Certificate to constitute record of conviction, and to be filed; commitment thereon; probation.

The magistrate must immediately cause the certificate, which constitutes the record of conviction, to be filed in the office of the clerk of the county, and must, by a warrant signed by him with his name of office, commit the defendant to the county jail, or in the city of New York, to the city prison or penitentiary of that city, or in the county of Monroe, to the penitentiary of that county, for not exceeding six months at hard labor, or until he gives the security prescribed in section nine hundred and one; or, if the defendant be a person described in the first or second subdivision of section eight hundred and ninety-nine, the magistrate may require him while on probation to pay through the probation officer weekly a reasonable sum for the support of his wife or children. (Amended by L. 1882, ch. 360; L. 1902, ch. 302, and L. 1910, ch. 609, in effect Sept. 1, 1910.)

Derivation: Same as § 901.

Cuniff v. Beecher (1895), 84 Hun 139, 66 St. Rep. 400, 32 N. Y. Supp. 1067. People, etc. v. Sadler (1885), 3 Crim. Rep. 473.

§ 904. Undertaking, when forfeited.

The undertaking mentioned in section nine hundred and one is forfeited by the commission of any of the acts which constitute the person by whom it was given a disorderly person and in the case of a person described in the first and second subdivisions of section eight hundred and ninety-nine by the failure to make the weekly payments ordered by the magistrate, and in the case of a person

described in the seventh and eighth subdivisions of section eight hundred and ninety-nine, by his playing or betting, at one time or sitting, for money or property exceeding the value of two dollars and fifty cents. (Amended by L. 1909, ch. 506. In effect Sept. 1, 1909.)

Derivation: 1 R. S. 689, § 8.

Buckley v. Boyce (1888), 17 St. Rep. 940; Breichbiel v. Powles (1891), 29 St. Rep. 857, 15 N. Y. Supp. 465; Mayor v. Ehrsam (1891), 16 N. Y. Supp. 527.

§ 905. How prosecuted, and proceeds how applied.

When an undertaking is forfeited, it may be prosecuted in the name of the county superintendents of the poor, or the overseers of the poor of the town, or in the city of New York, in the name of the corporation of that city, and the sum collected in the action must be paid into the county or city treasury, as the case may be, for the benefit of the poor. In case the defendant is an Indian, it must be prosecuted in the name of the people of the state of New York by the attorney-general, or at his request by the district attorney of the county, and the sum collected in the action, must be paid into the state treasury, for the benefit of the Indian poor. (Amended by L. 1901, ch. 165.)

Derivation: 1 R. S. 689, § 4.

Lutes v. Shelley (1886), 40 Hun 199; Tully v. Lewitz (1906), 50 Misc. 353, 98 N. Y. Supp. 829.

§ 906. When new security may be required, or defendant committed after recovery on undertaking.

Upon a recovery on the undertaking, the court in which it is had, may require from the defendant new security in the manner provided in section nine hundred and one, or if he fail to give it, may commit him in the manner provided in section nine hundred and three.

Derivation: 1 R. S. 689, § 5.

Lutes v. Shelley (1886), 40 Hun 199.

§ 907. Defendant committed for not giving security; how discharged.

A person committed as a disorderly person, on failure to give security, may be discharged by the committing magistrate or by any two justices of the peace, or police justices or magistrates or *the county judge of* the county, upon giving security as originally

required, pursuant to section nine hundred and one. (Amended by L. 1884, ch. 394; L. 1897, ch. 122.)

Derivation: 1 R. S. 639, § 6.

Tully v. Lewitz (1906), 50 Misc. 353, 98 N. Y. Supp. 829.

§ 908. Keeper of prison, to return list of disorderly persons, etc.

The keeper of every prison to which disorderly persons may be committed, must return to the county court of the county, on the first day of each term, a list of the persons so committed and then in his custody, with the nature of the offense of each, the name of the magistrate by whom he was committed, and the term of his imprisonment. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 639, § 7.

§ 909. Examination of the case by the court.

The county court must thereupon inquire into the circumstances of each case, and hear any proof that may be offered, and must examine the record of conviction, which is evidence of the facts contained in it, until disapproved. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 639, § 8.

§ 910. Court may discharge, place on probation, or authorize the binding out of disorderly person.

The court may discharge a person so committed from imprisonment, either absolutely or on parole under a salaried probation officer, or upon his giving security as provided in section nine hundred and one, or if he be a minor, may authorize the county superintendents of the poor, or the overseers of the poor of the town, or in the city of New York, the commissioner of charities, to bind him out in some lawful calling as a servant, apprentice, mariner or otherwise, until he be of age; or if he be of age, to contract for his service with any person, as a laborer, servant, apprentice, mariner or otherwise, for not exceeding one year. The binding out or contract, pursuant to this section, has the same effect as the indenture of an apprentice, with his own consent and that of his parents, and subjects the person bound out or contracted, to the same control of his master and of the county court of the county, as if he were bound as an apprentice. (Amended by L. 1895, ch. 880, and L. 1910, ch. 609, in effect Sept. 1, 1910.)

Derivation: 1 R. S. 639, § 9. See L. 1847, ch. 280, § 44.

People, etc. v. Sadler (1885), 3 Crim. Rep. 478.

§ 911. Court may also commit him to prison; nature and duration of imprisonment.

The court may also, in its discretion, order a person convicted as a disorderly person, to be kept in the county jail, or in the city of New York, in the city prison or penitentiary of that city, for a term not exceeding six months at hard labor.

Derivation: 1 R. S. 640, § 10.

§ 912. Order to procure materials and implements, and to compel him to work.

If there be no means provided in the prison for employing the offender at hard labor, the court may direct the keeper to furnish him such employment as it may specify, and for that purpose to purchase materials and implements, not exceeding a prescribed value, and to compel the offender to perform the work allotted to him. The expenses incurred in carrying the order into effect must be paid to the keeper by the county treasurer, upon the delivery to him of the order of the court, and an account under the oath of the keeper, of the materials and implements furnished.

Derivation: 1 R. S. 640, §§ 11, 12.

People v. Champlin (1907), 120 App. Div. 510, 105 N. Y. Supp. 849.

§ 913. Expense of materials or implements, how paid for, and proceeds of labor, how disposed of.

The keeper must sell the produce of the labor of the offender, and must account for the cost of the materials or implements purchased, and for one-half of the surplus, to the board of supervisors, and pay it into the county treasury, and pay the other half of the surplus to the person by whom it was earned, on his discharge from imprisonment. He must also account to the court, when required, for the materials or implements purchased, and for the disposition of the proceeds of the labor of the offender.

Derivation: Same as § 912.

People ex rel. Shortell v. Markell (1897), 20 Misc. 150, 45 N. Y. Supp. 904.

TITLE VIII.

OF PROCEEDINGS RESPECTING THE SUPPORT OF POOR PERSONS.

SECTION 914. Who may be compelled to support poor relatives.
915. Order to compel a person to support a poor relative, etc.
916. Court to hear the case and make order of support.
917. Support, when to be apportioned among different relatives.
918. Order to prescribe time during which support is to continue, or may be indefinite; when and how order may be varied.
919. Costs, by whom to be paid and how enforced.
920. Action on the order, on failure to comply therewith.
921. Parents leaving their children chargeable to the public, how proceeded against.
922. Seizure of their property; transfer thereof, when void.
923. Warrant and seizure, when confirmed or discharged; direction of the court thereon.
924. Warrant, in what cases to be discharged.
925. Sale of the property seized and application of its proceeds.
926. Powers of superintendents of poor.

§ 914. Who may be compelled to support poor relatives.

The father, mother and children, if of sufficient ability, of a poor person who is insane, blind, old, lame, impotent or decrepit, so as to be unable by work to maintain himself, must, at their own charge, relieve and maintain him in a manner to be approved by the overseers of the poor of the town where he is, or in the city of New York, by the commissioners of public charities. If such poor person be insane, he shall be maintained in the manner prescribed by the insanity law. The father, mother, husband, wife or children of a poor insane person legally committed to and confined in an institution supported in whole or in part by the state, shall be liable, if of sufficient ability, for the support and maintenance of such insane person from the time of his reception in such institution. (Amended by L. 1898, ch. 399.)

Derivation: 1 R. S. 614, § 1.

Matter of St. Lawrence Hospital (1897), 13 App. Div. 437, 43 N. Y. Supp. 608; De Puy v. Cook (1895), 20 Hun 46, 70 St. Rep. 499, 35 N. Y. Supp. 632; County of Oneida v. Bartholomew (1894), 82 Hun 82, 31 N. Y. Supp. 106; Ulrich v. Ulrich (1892), 42 St. Rep. 217, 17 N. Y. Supp. 722; Weaver v. Benjamin (1892), 18 N. Y. Supp. 630, 45 St. Rep. 96, People ex rel. Kronche v. O'Brien (1902), 39 Misc. 110, 78 N. Y. Supp. 904.

§ 915. Order to compel a person to support a poor relative, et cetera.

If a relative of a poor person fail to relieve and maintain him, as provided in the last section, the overseers of the poor of the town where he is, or in the city of New York, the commissioners of public charities may apply to the court of general sessions of the county of New York, or to the county court of any other county where the poor person dwells, for an order to compel such relief, upon at least five days' written notice, served personally, or by leaving it at the last place of residence of the person to whom it is directed, in case of his absence, with a person of suitable age and discretion. If such poor person be insane and legally committed to and confined in an institution supported in whole or in part by the state, and his relatives refuse or neglect to pay for his support and maintenance therein, application may be made by the treasurer of such institution in the manner provided in this section for an order directing the relatives liable therefor to make such payment. (Amended by L. 1898, ch. 399; L. 1904, ch. 520. In effect Sept 1, 1904.)

Derivation: 1 R. S. 614, § 2.

Matter of St. Lawrence Hospital (1897), 18 App. Div. 457, 46 N. Y. Supp. 608; Weaver v. Benjamin (1892), 45 St. Rep. 97, 18 N. Y. Supp. 630.

§ 916. Court to hear the case and make order of support.

At the time appointed in the notice, the court or a judge thereof must proceed summarily to hear the allegations and proofs of the parties, and must order such of the relatives of the poor person mentioned in section nine hundred and fourteen, as were served with the notice and are of sufficient ability, to relieve and maintain him, specifying in the order the sum to be paid weekly for his support, and requiring it to be paid by the father, or if there be none, or if he be not of sufficient ability, then by the children, or if there be none, or if they be not of sufficient ability, then by the mother. If the application be made to secure an order compelling relatives to pay for the maintenance of insane poor persons committed and confined in an institution supported in whole or in part by the state such order shall specify the sum to be paid for his maintenance by his relatives liable therefor, from the time of his reception in such institution to the time of making such order, and also the sum to be paid weekly for his future maintenance in

such institution. The relatives served with such notice shall be deemed to be of sufficient ability, unless the contrary shall affirmatively appear to the satisfaction of the court or a judge thereof. (Amended by L. 1898, ch. 399.)

Derivation: 1 R. S. 614, § 3.

Matter of St. Lawrence Hospital (1897), 18 App. Div. 437, 43 N. Y. Supp. 608; Weaver v. Benjamin (1892), 45 St. Rep. 97, 18 N. Y. Supp. 630.

§ 917. Support; when to be apportioned among different relatives.

If it appear that any such relative is unable to wholly maintain the poor person or to pay for his maintenance if confined in a state institution for the insane, but is able to contribute toward his support, the court or a judge thereof may direct two or more relatives, of different degrees, to maintain him or to pay for his maintenance in such an institution if insane, prescribing the proportion which each must contribute for that purpose; and if it appear that the relatives are not of sufficient ability wholly to maintain him, or to pay for his maintenance in such an institution, if insane, but are able to contribute something, the court or judge thereof must direct the sum, in proportion to their ability, which they shall pay weekly for that purpose. If it appears that the relatives who are liable for the maintenance of an insane poor person confined in a state institution for the insane are not able to pay the whole amount due for such maintenance from the time of such poor person's admission to such institution, the court or a judge thereof must direct the sum to be paid for such maintenance in proportion to the ability of the relatives liable therefor. (Amended by L. 1898, ch. 399.)

Derivation: 1 R. S. 614, § 4.

Matter of St. Lawrence Hospital (1897), 18 App. Div. 437, 43 N. Y. Supp. 608.

§ 918. Order to prescribe time during which support is to continue, or may be indefinite; when and how order may be varied.

The order may specify the time during which the relatives must maintain the poor person, or during which any of the sums directed by the court or a judge thereof are to be paid, or it may be indefinite or until the further order of the court or a judge thereof. If the order be for payment of a weekly sum for the maintenance of

an insane poor person in a state institution, the order shall specify that such sum shall be paid as long as such insane poor person is maintained in such institution. The court or a judge thereof may from time to time vary the order, as circumstances may require, on the application either of any relative affected by it, or of any officer on whose application the order was made, upon ten days' written notice. (Amended by L. 1898, ch. 399.)

Derivation: 1 R. S. 615, § 5.
Matter of St. Lawrence Hospital (1897), 13 App. Div. 437, 43 N. Y. Supp. 608.

§ 919. Costs, by whom to be paid, and how enforced.

The cost and expenses of the application must be ascertained by the court, and paid by the relatives against whom the order is made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by attachment.

Derivation: 1 R. S. 615, § 6.
Matter of St. Lawrence Hospital (1897), 13 App. Div. 437, 43 N. Y. Supp. 608.

§ 920. Action on the order on failure to comply therewith.

If a relative, required by an order of the court or a judge thereof, to relieve or maintain a poor person, neglect to do so in the manner approved by the officers mentioned in section nine hundred and fourteen, and neglect to pay to them weekly the sum prescribed by the court or a judge thereof, the officers may maintain an action against the relative, and recover therein the sum prescribed by the court or a judge thereof for every week the order has been disobeyed, to the time of the recovery, with costs, for the use of the poor. If the order directs a relative to pay for the maintenance of an insane poor person in a state institution, and such relative refuses or neglects to pay the amount specified therein, an action may be brought by the treasurer of such institution in its corporate name to recover the amount due to such institution by virtue of such order. (Amended by L. 1898, ch. 399.)

Derivation: 1 R. S. 615, § 7.
Matter of St. Lawrence Hospital (1897), 13 App. Div. 437, 43 N. Y. Supp. 608.

§ 921. Parents leaving their children chargeable to the public, how proceeded against.

When the father, or the mother being a widow or living separate

from her husband, absconds from the children, or a husband from his wife, leaving any of them chargeable or likely to become chargeable upon the public, the officers mentioned in section nine hundred and fourteen may apply to any two justices of the peace or police justices in the county in which any real or personal property of the father, mother or husband is situated, for a warrant to seize the same. Upon due proof of the facts, the magistrate must issue his warrant, authorizing the officers so applying to take and seize the property of the person so absconding. Whenever any child shall be committed to an institution pursuant to any provision of law, any criminal court or magistrate may issue a warrant for the arrest of the father of the child, and examine into his ability to maintain such child in whole or in part; and if satisfied that such father is able to contribute toward the support of the child, then such court or magistrate shall, by order, require the weekly payment by such father of such sum, and in such manner as shall be in said order directed toward the maintenance of such child in such institution, which amount when paid shall be credited by the institution to the city, town, or county against any sums due to it therefrom on account of the maintenance of the child. (Amended by L. 1888, ch. 220; L. 1903, ch. 13.)

Derivation: 1 R. S. 615, § 8. See L. 1862, ch. 473.

Goodman v. Alexander (1901), 165 N. Y. 291; People, etc. v. Dickson (1890), 57 Hun 315, 32 St. Rep. 496, 10 N. Y. Supp. 604; People, etc. v. New York Society, etc. (1898), 25 Misc. 54, 53 N. Y. Supp. 1017, rev'd 42 App. Div. 83, 58 N. Y. Supp. 953; People ex rel. Comrs. v. Clairmont (1908), 58 Misc. 517, 111 N. Y. Supp. 618.

§ 922. Seizure of their property; transfer thereof when void.

The officers so applying may seize and take the property, wherever it may be found in the same county; and are vested with all the right and title thereto, which the person absconding then had. The sale or transfer of any personal property left in the county from which he absconded, made after the issuing of the warrant, whether in payment of an antecedent debt or for a new consideration, is absolutely void. The officers must immediately make an inventory of the property seized by them, and return it, together with their proceedings, to the next county court of the county

where they reside, there to be filed. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 615, § 9.

§ 923. Warrant and seizure, when confirmed or discharged; direction of the court thereon.

The court, upon inquiring into the circumstances of the case, may confirm or discharge the warrant and seizure; and if it be confirmed, must, from time to time, direct what part of the personal property must be sold, and how much of the proceeds of the sale, and of the rents and profits of the real property, if any, are to be applied towards the maintenance of the children or wife of the person absconding.

Derivation: 1 R. S. 615, § 10.

§ 924. Warrant, in what cases to be discharged.

If the party against whom the warrant issued, return and support the wife or children so abandoned, or give security satisfactory to any two justices of the peace, or police justices in the city, village or town, to the overseers of the poor of the town, or in the city of New York, to the commissioners of charities and corrections, that the wife or children so abandoned shall not be chargeable to the town or county, then the warrant must be discharged by an order of the magistrates, and the property taken by virtue thereof restored to the party.

Derivation: 1 R. S. 616, § 11.

§ 925. Sale of the property seized and the application of its proceeds.

The officers must sell at public auction the property ordered to be sold, and receive the rents and profits of the real property of the person absconding, and in those cities, villages or towns which are required to support their own poor, the officers charged therewith must apply the same to the support of the wife or children so abandoned; and for that purpose must draw on the county treasurer, or in the city of New York, upon the comptroller, for the proceeds as directed by special statutes. They must also account to the county court of the county, for all money so received by them, and for the application thereof, from time to time, and may be

compelled by that court to render that account at any time. (Amended by L. 1895, ch. 880.)

Derivation: 1 R. S. 616, § 12.

§ 926. Powers of superintendents of poor.

In those counties where all the poor are a charge upon the county, the superintendents of the poor are vested with the same powers, as are given by this title to the overseers of the poor of a town, in respect to compelling relatives to maintain poor persons, and in respect to the seizure of the property of a parent absconding and abandoning his family; and are entitled to the same remedies in their names, and must perform the duties required by this title, of overseers, and are subject to the same obligations and control.

Derivation: 1 R. S. 616, § 13.

Weaver v. Benjamin (1892), 45 St. Rep. 97, 18 N. Y. Supp. 630.

TITLE IX.

OF PROCEEDINGS RESPECTING MASTERS, APPRENTICES AND SERVANTS.

SECTION 927. Complaint against apprentice or servant for absenting himself or refusing to serve, or for a misdemeanor or ill behavior.
928. Warrant, when complaint is made in the absence of the defendant.
929. Warrant, by whom and how executed.
930. Hearing the complaint, and committing or discharging the defendant.
931. Complaint against the master for cruelty, misusage or violation of duty.
932. Hearing the complaint, and dismissing it or discharging the apprentice or servant.
933. Preceding sections not applicable to apprentice with whom money is received or agreed for.
934. Complaint against master in such case, and direction thereon.
935. If complaint not compromised, the master to be held to appear at county court.
936. Proceedings thereon and order of the court.
937. Complaint by master against clerk or apprentice, where money is paid or agreed for: clerk or apprentice, when held to appear at county court.
938. Proceedings thereon and order of the court.
939-940. Repealed.

§ 927. Complaint against apprentice or servant, for absenting himself, or refusing to serve, or for a misdemeanor or ill behavior.

If an apprentice or servant, lawfully bound to service as prescribed by special statutes, willfully absent himself therefrom, without the leave of his master, or refuse to serve according to his duty, or be guilty of any misdemeanor or ill behavior, his master may make complaint of the facts under oath before a justice of the peace or police justice in the county or before the mayor, recorder or city judge of the city where he resides.

Derivation: 2 R. S. 158, §§ 28, 29.

Killoran v. Barton (1882), 26 Hun 649; Thomas v. Baird (1905), 47 Misc. 412, 413, 94 N. Y. Supp. 47; Samuel v. Wanamaker (1905), 107 App. Div. 488, 95 N. Y. Supp. 270.

§ 928. Warrant, when complaint is made in the absence of the defendant.

If the complaint be made in the absence of the defendant, and the facts be proved to the satisfaction of the magistrate, he must issue a warrant signed by him, with his name of office, to a peace officer of the county or city, commanding him to arrest the defendant and bring him before the magistrate forthwith, or at a specified time and place, to answer the complaint.

Derivation: 2 R. S. 159, § 30.

§ 929. Warrant, by whom and how executed.

The peace officer must accordingly execute the warrant by arresting the defendant and taking him before the magistrate.

Derivation: Same as § 928.

§ 930. Hearing the complaint, and committing or discharging the defendant.

The magistrate must immediately, or at a time to which he may, for good cause, adjourn the matter, proceed to hear the allegations and proofs of the parties, and if the complaint appear to be well founded, must commit the defendant to the county jail, or in the city of New York to the city prison of that city, for not exceeding one month, at hard labor, where he must be confined in a room with no other person; or may, by a certificate signed by him with his name of office, discharge the defendant from the service of his master, and the master from all obligations to the defendant.

Derivation: 2 R. S. 159, § 31.

§ 931. Complaint against the master for cruelty, misusage or violation of duty.

If a master be guilty of cruelty, misusage, refusal of necessary provisions or clothing, or any other violation of duty toward his apprentice or servant, as prescribed by special statutes, or by the indenture or contract of service, the apprentice or servant may make complaint, on oath, to any of the magistrates mentioned in section nine hundred and twenty-seven, who must summon the defendant before him at a specified time and place.

Derivation: 2 R. S. 159, § 32.
Killoran v. Barton (1882), 26 Hun 649.

§ 932. Hearing the complaint, and dismissing it or discharging the apprentice or servant.

The magistrate must immediately, or at a time to which he may, for good cause, adjourn the matter, proceed to hear the allegations and proofs of the parties, and if the complaint be well founded, must, by a certificate under his hands, with his name of office, discharge the apprentice or servant from the service of his master; or if not, he must, by a similar certificate, dismiss the complaint.

Derivation: 2 R. S. 159, § 32.
Killoran v. Barton (1882), 26 Hun 649.

§ 933. Preceding sections not applicable to apprentice with whom money is received or agreed for.

The preceding sections of this title do not extend to an apprentice whose master has received, or is entitled to receive, a sum of money with him, as a compensation for his instruction.

Derivation: 2 R. S. 159, § 33.

§ 934. Complaint against master in such case, and direction thereon.

Where money is paid or agreed to be paid, on binding out a clerk or apprentice, he may make the complaint mentioned in section nine hundred and thirty-one, and the magistrate to whom it is made must examine it, as provided in section nine hundred and thirty-two, and on such examination may make such order and direction between the parties as the justice of the case may require.

Derivation: 2 R. S. 159, § 34.
Killoran v. Barton (1882), 26 Hun 649.

§ 935. If complaint not compromised, the master to be held to appear at county court.

If, in the case mentioned in the last section, the complaint cannot be compromised, the magistrate must take a written undertaking from the master, for his appearance at the next term of the county court of the county, in a sum, and with sureties approved by him. (Amended by L. 1895, ch. 880.)

Derivation: 2 R. S. 160, § 35.
Killoran v. Barton (1882), 26 Hun 649.

§ 936. Proceedings thereon and order of the court.

Upon hearing the parties, the court may, by an order entered upon the minutes, direct that the clerk or apprentice be discharged from service, and that the money paid or agreed for in binding him out, be refunded, if paid, to the person who advanced it, or his personal representatives, or if not paid, that it be discharged, and that any security given therefor be delivered up or canceled.

Derivation: 2 R. S. 160, § 36.

§ 937. Complaint by master against clerk or apprentice, where money is paid or agreed for; clerk or apprentice when held to appear at county court.

The master of a clerk or apprentice, where money is paid or agreed for on binding him out, may make the complaint mentioned in section nine hundred and twenty-seven, and the magistrate to whom it is made must proceed thereupon, as provided in sections nine hundred and twenty-eight to nine hundred and thirty, both inclusive, and may discharge the complaint, or if in his opinion it be well founded, may take a written undertaking, in a sum and with sureties to be approved by him, for the appearance of the clerk or apprentice at the next term of the county court of the county. (Amended by L. 1895, ch. 880.)

Derivation: 2 R. S. 160, § 37.

§ 938. Proceedings thereon, and order of the court.

Upon hearing the parties, the court may proceed as provided in section nine hundred and thirty-six, and may punish the clerk or apprentice, by fine or imprisonment, or both, as for a misdemeanor.

Derivation: 2 R. S. 160, § 38.

§§ 939–940.

Repealed, L. 1896, chap. 272.

TITLE X.

OF CRIMINAL STATISTICS.

SECTION 941. District attorney to furnish statement to clerk.
942. Clerk of court of special sessions in the city and county of New York to furnish statement to secretary of state.
943. Clerk to furnish statement to secretary of state.
944. Penalty for neglect.
944a. Secretary of state to file statements and furnish copies.
945. Secretary of state to report to legislature.
946. Secretary of state to furnish forms.

§ 941. District attorney to furnish statement to clerk.

Within ten days after the adjournment of any criminal court of record in this state, the district attorney of the county in which the court shall be held, shall furnish to the clerk of the county a certified statement containing the names of all persons convicted of crime in said court; the crime for which convicted; whether the conviction was upon a trial or upon a plea of guilty and whether sentence was suspended or the defendant placed on probation; the cases in which counsel were assigned by the court to defend the defendant; the sex, age, nativity, residence and occupation of the defendant; whether married or single; the degree of education and religious instruction; whether parents are living or dead; whether temperate or intemperate, and whether before convicted or not of any crime, and any other information regarding them as may seem to him expedient. If necessary in order to obtain information of these facts, the defendant may be interrogated upon oath in court by the district attorney before judgment is pronounced. He shall also furnish to the clerk of the court a certified statement containing the names of all probation officers appointed by the court, with their address and date of appointment. (Amended by L. 1894, ch. 733; L. 1901, ch. 372.)

Derivation: 4 R. S. 738, §§ 6, 8. L. 1867, ch. 604, § 1.

§ 942. Clerk of court of special sessions in the city and county of New York to furnish statement to secretary of state.

The clerk or the deputy clerk of the court of special sessions

in the city and county of New York shall on or before the first day of February, eighteen hundred and ninety-five, and quarterly thereafter, transmit to the secretary of state a tabulated and certified statement, in the form prescribed by the secretary of state, containing the name of every person convicted of a crime, of every person against whom sentence was suspended, and of every person placed on probation in such court, after October thirty-first, eighteen hundred and ninety-four, and since the date of the closing of each last preceding quarterly report; a description of the offense of which such person was convicted; whether the conviction was upon a trial or upon a plea of guilty; and the date of the conviction; and also a certified statement containing the names of all probation officers appointed by the court, with their address and date of appointment. The police clerks of the city magistrates of the city of New York, shall on or before February first, nineteen hundred and one, and annually thereafter, transmit to the secretary of state, a tabulated statement made from their records, showing the number of males and females convicted of crime during each month in the preceding quarter in the several courts of such city magistrates; the number convicted of each offense, the number sentenced, the number fined, the number of those against whom sentence was suspended, and the number placed on probation, and shall also furnish a certified statement containing the names of all probation officers appointed by the magistrates, with their address and date of appointment. Such statements shall be in the form prescribed by the secretary of state. (Amended by L. 1894, ch. 733; L. 1901, ch. 372.)

Derivation: 4 R. S. 738, § 7; L. 1867, ch. 604, § 2.

§ 943. Clerk to furnish statement to secretary of state.

On or before the first day of February, eighteen hundred and ninety-five, and quarterly thereafter the clerk of each county shall transmit to the secretary of state a tabulated and certified statement, in the form prescribed by the secretary of state, of all the matters contained in the statements filed with such clerk by the district attorney of such county after October thirty-first, eighteen hundred and ninety-four; and of the name of each person shown to be convicted by a court of special sessions by the certificate of conviction filed with him by magistrates holding courts of special ses-

sions after October thirty-first, eighteen hundred and ninety-four, and since the date of the closing of each last preceding quarterly report made after October thirty-first, eighteen hundred and ninety-four, and showing the offense for which each person was so convicted; whether the conviction was upon a trial or upon a plea of guilty; the sentence imposed, whether the sentence was suspended, and whether the defendant was placed on probation. Said certified statement shall also contain the names of all probation officers appointed by said courts of special sessions, with their address and the date of their appointment. (Amended by L. 1894, ch. 733; L. 1901, ch. 372.)

Derivation: L. 1867, ch. 604, § 2.

§ 944. Penalty for neglect.

For every neglect of any justice, magistrate or clerk to comply with the requirements of this title, he shall forfeit the sum of fifty dollars, to be recovered by a civil action in the name of the people of the state. (Amended by L. 1894, ch. 733.)

Derivation: L. 1867, ch. 604, § 3.

§ 944-a. Secretary of state to file statements and furnish copies.

The secretary of state shall file such statement furnished by the clerk of each county, and whenever required, by the attorney-general or district attorney of any county, shall furnish an exemplification of any such statement or of a part thereof, under the seal of his office, without charging any fees therefor; which exemplification shall be sufficient evidence on the trial of any person for a second or subsequent offense, of the conviction stated in such statement. But neither such statement, nor the exemplification thereof, shall in any other case, be evidence of such conviction. (Added by L. 1909, ch. 66, § 1. In effect Feb. 17, 1909.)

Derivation: 2 R. S. 738, §§ 8, 9.

§ 945. Secretary of state to report to legislature.

The secretary of state shall, on or before March first, in each year, cause all the information and statistics contained in the foregoing certified statements made to him by the several county clerks, to be compiled and tabulated in convenient form for reference, and so arranged that each fact shall appear under its appro-

priate column or heading, and subdivided according to the crime or offense charged, and transmit the same to the legislature. (Amended by L. 1894, ch. 733.)

Derivation: L. 1867, ch. 604, § 5.

§ 946. Secretary of state to furnish forms.

The secretary of state shall cause this title to be published with forms and instructions for the execution of the duties therein prescribed, and copies thereof to be furnished annually to each county clerk. The forms furnished by the secretary of state as herein provided, shall contain in tabulated form, the nature of every offense upon which a conviction was had, the court before which the defendant was convicted, the character of the sentence imposed, the cases where defendant had been previously convicted, the cases where sentence was suspended, the cases where the defendant was placed upon probation, and the cases where the probation was revoked, together with the age, sex, nativity and residence of the defendant, and a sufficient number of the copies of this title, and of such instructions, and of the forms to be used by the district attorney, or clerk or deputy clerk of the court of special sessions of the city and county of New York, shall also be furnished to each clerk to enable him to furnish at least one copy thereof annually to the district attorney, and the clerk of the court of special sessions of the city and county of New York, and the county clerk shall distribute the copies of this title and of such forms and instructions accordingly, and when said county clerk is not a salaried officer his disbursements and compensation for his services under this act shall be a county charge. The expense of the secretary of state in publishing this title and distributing copies thereof, and of such forms and instructions as are herein required, shall be paid by the treasurer of the state, upon the warrant of the comptroller, from moneys in the treasury not otherwise appropriated. (Amended by L. 1894, ch. 773; L. 1901, ch. 372.)

Derivation: L. 1867, ch. 604, § 4.

People, etc. v. Palmer (1895), 14 Misc. 41, 35 N. Y. Supp. 222, 68 St. Rep. 167, 171.

TITLE XI.

MISCELLANEOUS PROVISIONS, RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

SECTION 950. Parties to a special proceeding, how designated.
951. Provisions respecting entitling affidavits, applicable.
952. Courts and magistrates to issue subpœnas, and punish disobedience of witnesses.

§ 950. Parties to a special proceeding, how designated.

The party prosecuting a special proceeding of a criminal nature, is designated in this Code as the complainant, and the adverse party as the defendant.

New.

Killoran v. Barton (1882), 26 Hun 650; People ex rel. Scherer v. Walsh (1884), 33 Hun 346.

§ 951. Provisions respecting entitling affidavits, applicable.

The provisions of this Code, in respect to entitling affidavits in a criminal action, are applicable to special proceedings of a criminal nature.

New.

People ex rel. Scherer v. Walsh (1884), 33 Hun 346, 2 Crim. Rep. 327.

§ 952. Courts and magistrates to issue subpœnas, and punish disobedience of witnesses.

All courts and magistrates having before them special proceedings of a criminal nature, may issue subpœnas for witnesses, and punish their disobedience in the same manner as in criminal actions.

New.

TITLE XII.*

VIOLATIONS OF THE PROVISIONS OF THE PENAL LAW RELATING TO THE MANUFACTURE OR SALE OF SPURIOUS SILVERWARE OR GOLDWARE.

SECTION 952a. Issue of summons.
952b. Service of summons.
952c. Investigation of the charge.
952d. Discharge of defendant.
952e. Bond of manufacturer or dealer.
952f. Action on the bond.
952g. Recovery on bond a bar to subsequent criminal prosecution.

§ 952-a. Issue of summons.

Upon any information against a person, firm, corporation or association for violation of sections four hundred and twenty-two, four hundred and twenty-three, four hundred and twenty-four, four hundred and twenty-five, four hundred and twenty-six, four hundred and twenty-seven, four hundred and twenty-eight, four hundred and twenty-nine and four hundred and thirty-one of the penal law, the magistrate must issue a summons in substantially the form prescribed in section six hundred and seventy-six, signed by him with his name of office, requiring the accused to appear before him at a specified time and place to answer the charge; the time to be not more than twenty days after the issuing of the summons. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1898, ch. 381, § 1, as amended by L. 1905, ch. 288, § 2.

§ 952-b. Service of summons.

The summons must be served by delivering a copy thereof showing the original to the defendant; or, if the defendant [illegible] poration, by delivering a copy thereof and showing the ori[illegible] the president or other head of the corporation; or, to the se[illegible] cashier, or managing agent thereof. (Added by L. 1909, [illegible] § 3. In effect Feb. 17, 1909.)

Derivation: L. 1898, ch. 381, § 2.

*Added, L. 1909, ch. 66, § 3. In effect Feby. 17, 1909.

§ 952-c. Investigation of the charge.

At the time appointed the magistrate must proceed to investigate the charge, in the manner provided by law for the investigation of a charge against any natural person or corporation brought before him, so far as those proceedings are applicable, except as provided by sections nine hundred and fifty-two-d, nine hundred and fifty-two-e, nine hundred and fifty-two-f and nine hundred and fifty-two-g. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1898, ch. 331, § 8.

§ 952-d. Discharge of defendant.

If it shall appear to the magistrate upon the investigation that the defendant has filed a bond as provided in section nine hundred and fifty-two-e, and that the article of merchandise concerning which the charge is brought was not made or altered in any way by the defendant, and that it was acquired by him in good faith as an article of the standard of purity prescribed in sections four hundred and twenty-two, four hundred and twenty-three, four hundred and twenty-four, four hundred and twenty-five, four hundred and twenty-six, four hundred and twenty-seven, four hundred and twenty-eight, four hundred and twenty-nine and four hundred and thirty-one of the penal law, and without knowledge or information on the part of the defendant to the contrary, the charge must be dismissed and the defendant discharged, provided the person from whom the defendant acquired the article is within the jurisdiction of the court or has likewise filed a similar bond, which bond is in full force and effect at the time of the sale by said defendant, and provided also the defendant furnish to the magistrate an affidavit stating the name, residence and place of business of the person from whom the article was acquired by the defendant, and the circumstances of its acquisition, together with an undertaking with two sufficient sureties, in a sum to be fixed by the magistrate, conditioned for the appearance of the defendant to testify in any prosecution, action, or proceeding against the person from whom the article was required, or in any action or proceeding upon the bond given by such person. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1898, ch. 331, § 4, as amended L. 1905, ch. 388, § 2.

§ 952-e. Bond of manufacturer or dealer.

Any manufacturer of silverware or goldware, or any wholesale or retail dealer in silverware or goldware, upon payment of a fee of fifteen dollars, may file in the office of the secretary of state a bond, executed by himself as principal, and by a fidelity or surety company authorized by the laws of this state to transact business, or by himself as principal and two sufficient sureties, both of whom must be freeholders, and at least one of whom must be a resident of this state and a freeholder therein, which bond shall be approved by a justice of the supreme court, and be subject to the provisions of chapter eight, title six, article fifth, of the code of civil procedure, so far as they are applicable, in the penal sum of five thousand dollars, conditioned for faithful compliance with all the provisions of sections four hundred and twenty-two, four hundred and twenty-three, four hundred and twenty-four, four hundred and twenty-five, four hundred and twenty-six, four hundred and twenty-seven, four hundred and twenty-eight, four hundred and twenty-nine and four hundred and thirty-one of the penal law. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1898, ch. 331, § 5, as amended L. 1905, ch. 228, § 2.

§ 952-f. Action on the bond.

Upon satisfactory proof by affidavit to the attorney-general, of a violation of any provisions of sections four hundred and twenty-two, four hundred and twenty-three, four hundred and twenty-four, four hundred and twenty-five, four hundred and twenty-six, four hundred and twenty-seven, four hundred and twenty-eight, four hundred and twenty-nine and four hundred and thirty-one of the penal law, it shall be his duty to declare the bond provided for in the preceding section forfeited, and to forthwith proceed on behalf of the people of the state of New York to recover, as liquidated damages, the whole of the sum specified therein from the parties thereto, against whom judgment for the entire amount must be rendered upon proof duly made of a violation by the principal of any provision of the said sections of the penal law, unless the principal shall already have been convicted in a criminal prosecution for the same violation. If, however, at any time before the recovery of judgment upon such forfeiture, the principal shall ap-

pear before the magistrate who issued such warrant or summons, so that the charge against him may be duly examined and proceeded with criminally, any proceedings before the attorney-general shall be discontinued, and if the bond shall have been meanwhile forfeited, such forfeiture shall be rescinded by the attorney-general, and any subsequent action thereon thereby rendered null and inoperative. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1898, ch. 331, 6, as amended L. 1905, ch. 288, § 2.

§ 952-g. Recovery on bond a bar to subsequent criminal prosecution.

Proof of the actual recovery by the people of the state of the whole amount named in a bond given pursuant to the provision of section nine hundred and fifty-two-e, may be pleaded in bar of any subsequent criminal prosecution for the same violation for which the recovery upon the bond was had. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1898, ch. 331, § 7.

TITLE XIII.*

INVESTIGATION BY SHERIFFS AND CORONERS OF THE ORIGIN OF FIRES.

SECTION 952h. Affidavit and request for investigation.
952i. Powers of sheriffs and coroners.
952j. Hearing and inquisition by jury.
952k. Arrest of person charged with offense; binding over witnesses to appear.
952l. Examination of person arrested.
952m. Inquisition and testimony to be returned to next criminal court of record.
952n. Compensation and payment of officers.
952o. Limitation of the application of this title.

§ 952-h. Affidavit and request for investigation.

Whenever it shall be made to appear by the affidavit of a credible witness, that there is ground to believe that any building has been maliciously set on fire, or attempted to be, any coroner, sheriff or deputy sheriff of the county in which such crime is supposed to have been committed, to whom such affidavit shall be delivered, and who shall be requested in writing by the president, secretary or agent of any insurance company, or by two or more reputable freeholders to investigate the truth of such belief, shall do so without delay. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1857, ch. 504, § 1.

§ 952-i. Powers of sheriffs and coroners.

For this purpose he shall possess all the powers conferred upon coroners for the purpose of holding inquests by the first four sections of article first of title seventh of chapter second of part fourth of the revised statutes. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1857, ch. 504, § 2.

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* Added, L. 1909, ch. 66, § 3. In effect Feby. 17, 1909.

§ 952-j. Hearing and inquisition by jury.

The jury, after inspecting the place where the fire was or was attempted, and after hearing the testimony, shall deliver to the officer holding such inquest their inquisition in writing, to be signed by them, in which they shall find and certify how, and in what manner such fire happened or was attempted, and all the circumstances attending the same, and who were guilty thereof, either as principal or accessory, and in what manner. But if such jury shall be unable to ascertain the origin and circumstances of such fire, they shall find and certify accordingly. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1857, ch. 504, § 3.

§ 952-k. Arrest of person charged with offense; binding over witnesses to appear.

If the jury find that any building has been designedly set on fire, or has been attempted so to be, the officer holding such inquest shall bind over the witnesses to appear and testify at the next criminal court, at which an indictment for such offense can be found, that shall be held in the county. And in such case, if the party charged with any such offense be not in custody, the officer holding such inquest shall have power to issue process for his arrest in the same manner as justices of the peace. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1857, ch. 504, § 4.

§ 952-l. Examination of person arrested.

The officer issuing such process shall have the same power to examine the party arrested as is possessed by a justice of the peace, and shall in all respects proceed in like manner. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1857, ch. 504, § 5.

§ 952-m. Inquisition and testimony to be returned to next criminal court of record.

The testimony of all witnesses examined before the jury under this law, shall be reduced to writing by the officer holding the inquest, and shall be returned by him, together with the inquisition of the jury, and all recognizances and examinations taken by such officer, to the next criminal court of record that shall be held in

such county. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1857, ch. 504, § 6.

§ 952-n. Compensation and payment of officers.

The compensation of the officers holding such inquest, and their actual and necessary expenses under this title, shall be fixed, audited, and paid in the same manner as the compensation and actual and necessary expenses of coroners are now provided for by law. (Added by L. 1909, ch 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1857, ch. 504, § 7.

§ 952-o. Limitation of the application of this title.

This title shall not extend to the cities of New York and Buffalo. (Added by L. 1909, ch. 66, § 3. In effect Feb. 17, 1909.)

Derivation: L. 1857, ch. 504, § 8.

TITLE XIV.

GRAND JURY STENOGRAPHERS.

SECTION. 952p. Appointment of stenographers.
952q. Stenographer to be citizen and resident of county where appointed; exception as to Hamilton.
952r. Evidence of appointment and filing same, stenographer's oath.
952s. Revocation of appointment.
952t. Stenographers' duties.
952u. Misdemeanor for stenographer to violate provisions of this title.
952v. Compensation and payment of stenographers.
952w. Designation of temporary stenographer.

§ 952-p. Appointment of stenographers.

It shall be lawful for the district attorney of any county of this state, to appoint a stenographer to take the testimony given before the grand juries in said county. In the county of Erie, it shall be lawful for the district attorney of such county to appoint two stenographers, each of whom shall have authority to take and transcribe the testimony given before the grand juries in the said county of Erie, and such appointments shall be in writing, under the hand and seal of such district attorney, and shall be filed in the county clerk's office of said county of Erie. In the county of New York, it shall be lawful for the district attorney of such county to appoint three stenographers, each of whom shall have authority to take and transcribe the testimony given before the grand juries in said county of New York, and such appointments shall be in writing, under the hand and seal of such district attorney, and shall be filed in the county clerk's office of said county of New York. In the county of Monroe, it shall be lawful for the district attorney of such county to appoint three stenographers, to be known as the first, second and third stenographer, each of whom shall have authority to take and transcribe the testimony given before the grand juries in said county of Monroe, and each of whom shall be considered as an assistant to the district attorney and under his direction and control. Every stenographer so appointed whenever directed by the district attorney, shall have authority to attend upon and take and transcribe the testimony given at coroner's inquests and the examination and trial of criminal cases, which said testimony so taken and transcribed shall be for the exclusive use and benefit of the district attorney, unless otherwise ordered by the court, or otherwise agreed upon by the district attorney. The appointment of a stenographer by said district attorney shall be

deemed a revocation of any prior appointment of a stenographer. (Added by L. 1909, ch. 66, § 4. In effect Feb. 17, 1909, and amended by L. 1909, ch. 285, § 1, and by L. 1911, ch. 115, in effect May 6, 1911.)

Derivation: L. 1885, ch. 348, § 1, as amended by L. 1886, ch. 131, § 1; L. 1894, ch. 82, § 1; L. 1895, ch. 661, § 1; L. 1899, ch. 45, § 1; L. 1899, ch. 516, § 1; L. 1907, ch. 222, § 1, and L. 1907, ch. 587, § 1.

§ 952-q. Stenographer to be citizen and resident of county where appointed; exception as to Hamilton county.

Every stenographer appointed under the provisions of this title shall be a citizen and resident of the county in which he is appointed, except that the district attorney of Hamilton county may appoint a stenographer residing in the county of Fulton. (Added by L. 1909, ch. 66, § 4. Amended by L. 1911, ch. 632, in effect July 10, 1911.)

Derivation: L. 1885, ch. 348, § 2, as amended by L. 1895, ch. 177, § 1; L. 1889, ch. 516, § 2, and L. 1907, ch. 587, § 2.

§ 952-r. Evidence of appointment and filing same; stenographer's oath.

Ecery appointment made pursuant to this title shall be in writing under the hand of the official who makes the same, and shall be filed in the clerk's office of the county in which such appointment is made. Every appointee, before he enters upon the duties of his office, shall take and subscribe the constitutional oath of office, and shall make oath before the county clerk that he will keep secret all matters and things occurring before such grand juries. (Added by L. 1909, ch. 66, § 4. In effect Feb. 17, 1909.)

Derivation: L. 1885, ch. 348, § 3, as amended by L. 1907, ch. 587, § 3.

§ 952-s. Revocation of appointment.

Any appointment made under the provisions of this title may be revoked by the district attorney, which revocation must be in writing and be filed in the office of the clerk of the county in which such appointment was filed. (Added by L. 1909, ch. 66, § 4. In effect Feb. 17, 1909.)

Derivation: L. 1885, ch. 348, § 4, as amended by L. 1907, ch. 587, § 4.

§ 952-t. Stenographer's duties.

It shall be lawful for any stenographer duly appointed and qualified as hereinbefore provided, to attend and be present at the

session of every grand jury impaneled in the county in which he is appointed, and it shall be his duty to take in shorthand or upon a typewriting machine the testimony introduced before such grand juries, and to furnish to the district attorney of such county a full copy of all such testimony as such district attorney shall require, but he shall not permit any other person to take a copy of the same, nor of any portion thereof, nor to read the same, or any portion thereof, except upon the written order of the court duly made after hearing the said district attorney. All of the said original notes and minutes shall be kept in custody of said district attorney, and neither the same, nor a copy of the same, or any portion of the same, shall be taken from the office of said district attorney excepting as above provided. (Added by L. 1909, ch. 66, § 4. In effect Feb. 17, 1909.)

Derivation: L. 1885, ch. 348, § 5, as amended by L. 1899, ch. 516, § 3, and L. 1907, ch. 587, § 5.

People v. Guenther (1909), 65 Misc. 150.

§ 952-u. Misdemeanor for stenographer to violate provisions of this title.

Every stenographer appointed as aforesaid, who violates any provision of this title is guilty of a misdemeanor. (Added by L. 1909, ch. 66, § 4. In effect Feb. 17, 1909.)

Derivation: L. 1885, ch. 348, § 6, as amended by L. 1899, ch. 516, § 4, and L. 1907, ch. 587, § 6.

§ 952-v. Compensation and payment of stenographers.

Each stenographer appointed as aforesaid shall receive such compensation for services rendered while engaged in taking testimony before a grand jury, as shall be determined by the board of supervisors of the county in which he is appointed, excepting that in the county of New York, such compensation shall be fixed by the board of estimate and apportionment of the city of New York, and such compensation shall not be less than five nor more than ten dollars per day; and in addition thereto such stenographer shall be entitled to and shall be allowed for a copy of testimony furnished to the district attorney the same rate per folio as is now allowed to the stenographers of the county court or court of common pleas, in their respective counties, and such clerk shall receive the same compensation for all copies of the evidence in excess

of three copies, furnished by him to the district attorney. Such compensation shall be a county charge, and shall be paid by the treasurer of such county upon the affidavit of the stenographer and the certificate of the district attorney specifying the number of days of actual service and the number of folios furnished; excepting that in the counties of Erie and Monroe the salaries of said stenographers shall be fixed by the board of supervisors; and excepting that in the counties of Queens and Oneida said stenographer shall receive a salary of one thousand dollars per annum, and in the county of Orange, twelve hundred dollars per annum. Such salaries shall be a county charge and shall be paid monthly, and in Erie county semi-monthly, by the treasurer of said county in the same manner as the salaries of other county officers are paid. (Added by L. 1909, ch. 66, § 4. In effect Feb. 17, 1909. Amended by L. 1909, chs. 172, 240 and 285. In effect May 5, 1909.)

Derivation: L. 1885, ch. 348, § 7, as amended by L. 1894, ch. 82, § 2; L. 1895, ch. 661, § 2; L. 1897, ch. 25, § 1; L. 1899, ch. 45, § 2; L. 1899, ch. 516, § 5; L. 1900, ch. 329, § 1; L. 1904, ch. 354, § 1, and L. 1907, ch. 222, § 2.

§ 952-w. Designation of temporary stenographer.

In case of the absence by reason of illness, or other cause, of the official stenographer to any grand jury in any county of this state, the district attorney of the county may designate a stenographer to perform the duties of such official stenographer during such absence, and the stenographer so designated shall receive the compensation which the official stenographer would have received for the same service, and the same shall be deducted from the salary of the official stenographer. (Added by L. 1909, ch. 66, § 4. In effect Feb. 17, 1909.)

Derivation: L. 1885, ch. 348, § 10, as added by L. 1908, ch. 446, § 1.

GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THIS CODE.

SECTION 953. Abatement of nuisance.
954. No part of this Code retroactive, unless expressly so declared.
955. Present tense includes future, etc.
956. Definition of "writing."
957. Definition of "oath."
958. Definition of "signature."
959. Definition of "magistrate."
960. Definition of "peace officer."
961. Definition of "county court."
962. To what actions and proceedings this Code applies.
963. When Code to take effect.

§ 953. Abatement of nuisance.

Where a person is convicted of keeping or maintaining a public nuisance, and sentenced to punishment, the court may in its judgment, in addition to or in place of other punishment, direct that the nuisance be abated, and issue an order to the sheriff of the proper county to execute the judgment as therein directed.

New.

§ 954. No part of this Code retroactive, unless expressly so declared.

No part of this Code is retroactive, unless expressly so declared.

New.

People ex rel. Lewisohn v. General Sessions (1904), 96 App. Div. 201, 89 N. Y. Supp. 864, aff'd 179 N. Y. 594; People v. Cox (1902), 67 App. Div. 344, 345, 73 N. Y. Supp. 774.

§§ 955–957.

Repealed, by L. 1892, ch. 677.

§ 958. Definition of "signature."

The term "signature" includes a mark, when the person cannot write; his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except

to an affidavit or deposition, or a paper executed before a judicial officer; in which case the attestation of the officer is sufficient.

§ 959. Definition of "magistrate."

Unless when otherwise provided, the term "magistrate" signifies any one of the magistrates mentioned in section one hundred and forty-seven.

New.

§ 960. Definition of "peace officer."

Unless when otherwise provided, the term "peace officer" signifies any one of the officers mentioned in section one hundred and fifty-four.

New.

People ex rel. Conway Bros. v. Board, etc. (1908), 126 App. Div. 488.

§ 961. Definition of "county court."

The term "county court" includes "the court of general sessions in the city and county of New York," wherever such inclusion does not conflict with other provisions of this Code. (Amended by L. 1895, ch. 880.)

New.

People v. Flaherty (1908), 126 App. Div. 67,

§ 962. To what actions and proceedings this Code applies.

This Code applies to criminal actions, and to all other proceedings in criminal cases which are herein provided for, from the time when it takes effect; but all such actions and proceedings, heretofore commenced, must be conducted in the same manner as if this Code had not been passed; except that if in any local statute confined, by its terms, to a town or village or to a county or city other than the city and county of New York, any proceeding is prescribed, in addition to those prescribed by this Code and not inconsistent with it, the same shall remain unaffected by it.

New.

People ex rel. Sherwin v. Mead (1883), 92 N. Y. 415; People v. Bork (1884), 96 N. Y. 188, 31 Hun 372; Slernert v. Lobey (1897), 14 App. Div. 508, 44 N. Y. Supp. 146; Willett v. People (1882), 27 Hun 471; Ostrander v. People (1882), 28 Hun 48, 29 Hun 519; People ex rel. Sherwin v. Mead (1882), 28 Hun 231; People v. Petrea (1883), 80 Hun 112; Comrs. of Charities v. Hammill (1884), 33 Hun 349; People v. Holmes (1886), 41 Hun 56; People ex rel. Taylor v. Forbes (1894), 62 St. Rep. 176; People v. Smith (1902), 172 N. Y. 210, 226; People v.

Bissert (1902), 71 App. Div. 121, 16 N. Y. Cr. 409, 75 N. Y. Supp. 630; affd., 172 N. Y. 643; Kring v. Missouri, 107 U. S. 221; Hopt v. Territory, 110 U. S. 574, 29 Alb. L. J. 337; Marion v. State, 16 Neb. 349, 31 Alb. L. J. 71.

§ **963. When Code to take effect.**

This Code shall take effect on the first day of September, eighteen hundred and eighty-one. When construed in connection with other statutes, it must be deemed to have been enacted on the fourth day of January, eighteen hundred and eighty-one, so that any statute enacted after that day is to have the same effect as if it had been enacted after this Code.

See Matter of McMahon (1883), 64 How. Pr. 284, 1 N. Y. Cr. 58; Peo. v. Jefferson (1885), 101 N. Y. 20, 3 N. Y. Cr. 575; Peo. v. Session (1882), 62 How. Pr. 415, 10 Abb. N. C. 192; Willett v. Peo. (1882), 27 Hun, 470; Peo. v. Petrea (1883), 92 N. Y. 128, 1 N. Y. Cr. 244; Peo. ex rel. v. Sadler (1884), 2 N. Y. Cr. 440; Matter of Waters (1883), 66 How. Pr. 174; Matter of Ramscar (1882), 1 N. Y. Cr. 38, 10 Abb. N. C. 442, 63 How. Pr. 285; Peo. v. Welch (1883), 1 N. Y. Cr. 488; Peo. v. Bissert (1902), 71 App Div. 121, 16 N. Y. Cr. 409, 75 N. Y. Supp. 630, affd., 172 N. Y. 643.

SCHEDULE OF LAWS REPEALED BY LAWS 1909, Ch. 66, § 6.

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Revised Statutes....	Part 4, chapter 2, title 8, sections 2–6, 9, 14, 17	
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1808	155.....	23, 24
1808.....	163.....	9, 10
1808.....	204.....	8
1809	138.....	1–5, 7
1811.....	88.....	3
1811.....	196.....	1
1811.....	202.....	16
1812.....	84.....	2
R. L. 1813.	8.....	All
R. L. 1813.	18.....	All
R. L. 1813.	66.. ...	15–23
R. L. 1813.	104.....	All
1816.....	1.....	3–6 (40th Sess.)
1817	253.....	3
1817.....	278.....	4, 5, 7, 8
1818.....	132.....	All
1819	192.....	All
1820.....	236.....	All
1822.....	96.....	All
1822.....	148.....	All
1822.....	260... ..	33
1823.....	47.....	3, 6–8
1824.....	61.....	2
1824.....	238.....	47–51
1824.....	254.....	3–5
1827.....	226.....	All
1827.....	236.....	All
1828.....	20.....	15, ¶ 22 (2d Meeting)
1828.....	21.....	1, ¶¶ 31, 37, 42, 57, 121, 132, 155, 163, 254, 284, 313, 351, 523 (2d Meeting)
1829.....	65.....	All
1830.. ...	320.....	60–63
1834.....	78.....	All
1835.....	258.....	All
1836.....	506.....	1, 2, 4, 5
1837.....	240.....	All
1839.....	350.....	All
1840.....	110... ..	2
1840.....	243.....	All
1840	311.....	All
1841.....	332.....	All
1842	155.....	All
1843.....	129.....	All
1844.....	148.....	6
1845.....	3.....	1–5
1845... ..	180.....	15–20
1845	228.....	2–5
1846.....	5.....	All
1846.....	59.....	All
1846.....	118.....	All
1847.....	4.....	All
1847.....	12.....	All
1847.....	118.....	All
1847.....	134.....	2, 3
1847.....	280.....	1–3, 25, 38–44
1847.....	328.....	All
1847.....	338.....	All
1847.....	455.....	17
1847.....	460.....	157, 158
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LAWS	CHAPTER	SECTION
1852	82	All
1855	337	All
1857	504	All
1857	769	All
1858	330	All
1858	332	All
1859	206	All
1859	339	All
1859	462	All
1859	491	All
1860	135	All
1860	271	All
1860	410	3–5, 8
1860	431	All
1860	498	3–6
1860	508	All
1861	96	1
1861	97	1–3, 6–10
1861	127	All
1861	333	1, 2
1862	151	All
1862	372	All
1863	226	All
1864	379	All
1865	563	All
1866	95	All
1866	409	All
1866	467	All
1866	692	3–5, 8
1866	723	All
1867	604	All
1867	961	All
1868	430	4, 5
1869	155	All
1869	278	All
1869	631	3
1869	678	All
1869	742	5, 6, 9, 10.
1869	820	1, pt. amending L. 1866, ch. 692, § 8
1869	895	1, 2
1870	3	All
1870	30	All
1871	302	All
1871	438	All
1871	666	All
1872	56	All
1872	378	All
1872	475	All
1872	530	All
1872	627	All
1872	747	4
1873	357	All
1873	427	2, 3
1873	586	All
1873	630	All
1874	12	7
1874	446	Tit. 1, §§ 21, 22, 26
1875	259	All
1875	324	All
1875	352	All
1875	529	All
1876	21	All
1876	61	All
1876	95	All
1876	115	All
1876	182	1
1876	267	1
1876	295	All
1876	366	All
1877	89	All
1877	167	All
1878	286	All
1878	290	All
1878	325	All
1879	59	All
1879	143	All
1879	176	All
1879	390	All
1879	449	All
1880	122	All
1880	176	1–6
1880	354	All
1880	538	All
1881	614	All
1882	301	All
1884	188	All
1885	348	All
1885	449	All
1886	131	All
1887	583	1, pt. adding § 26 to L. 1885, ch. 183
1887	711	7
1889	382	1, pt. affecting R. S., pt. 4, ch. 3, tit. 2, § 70

LAWS	CHAPTER	SECTION
1890	156	All
1892	686	98, 99
1894	82	All
1895	177	All
1895	661	All
1896	34	All
1896	574	All
1897	25	All
1897	812	25, subd. 2, pt. beginning "Courts of special sessions" and ending with "and also"
1897	451	All
1898	381	All
1898	417	All
1899	45	All
1899	516	All
1900	329	All
1904	354	All
1905	168	All
1905	388	All
1907	223	All
1907	587	All
1908	446	All
Code Civil Procedure		1041, third sentence

CODE OF CRIMINAL PROCEDURE FORMS.

No. 1.

Information for warrant—General form.

(Crim. Code, § 145.)

To ....., one of the justices of the peace [or police justice] in and for the county of ..... [or city of, as the case may be]:

....., of the town of ....., in said county, being duly sworn, says that on the ..... day of ....., 19.., at the town of ..... aforesaid, in said county, ... late of the ..... of ....., in said county of ....., did commit the crime of ....., in that he did [here state with particularity the crime charged]. Wherefore complainant prays that legal process may be issued, and that the said ..... be apprehended and held to answer said complaint, and be dealt with according to law.

Dated at ....., in the ..... of ....., this .... day of ....., 19..

.....

Taken, subscribed and sworn to before me, this .... day of ....., 19..

.....,

.....

No. 2.

Information for felony or misdemeanor.

STATE OF NEW YORK, } ss.:
COUNTY OF ....., }

....., being duly sworn, deposes and says that he resides in .....; that one ....., at the ....., in the county of ..... aforesaid, on the .... day of ....., 19.., did feloniously, wrongfully, unjustly, unlawfully, wickedly, wilfully, corruptly, falsely, maliciously, and knowingly violate chapter ..... of the laws of the State of New York, passed ..... [or] of the provisions of subd. .... of section .... of the ..... Code of the State of New York, in that he did.....

.....

Subscribed and sworn to before me, this .... day of ....., 19..

.....,

.....

No. 3.

Information for arson, first degree.

(Crim. Code, § 486.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that in the ..... time of the .... day of ....., 19.., one ..... did wilfully set fire to or burn a certain ....., to wit: ..... in the ..... of ....., in which there was at the time a human being [or if under subd. 2, add "to the knowledge of .....] to wit: ....., in that said ..... did [set forth the facts] .....

.....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....,

.....

No. 4.

Information for arson, second and third degrees.

[Penal Law, § 221.]

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that in the ..... time of the .... day of....., 19.., in the ..... of ....., one ..... did wilfully set fire to or burn a shop, warehouse or other building, to wit: ..... in which there was not at the time a human being: said ..... adjoined to or was within the curtilage of an inhabited dwelling-house, to wit: ..... so that the said house was endangered by such firing; in that said ..... did [state the facts] .....

.....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....,

.....

No. 5.

Information for assault, first degree (firearms).

[Penal Law, § 240 (1).]

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., at the ..... in said county, ... in and upon the body of ..... in the peace of the said people, then and

there being, feloniously did make an assault, and to, or toward and against ..... the said ..... a certain ..... then and there loaded and charged with gunpowder and lead, which the said ..... then and there had and held the same, being then and there likely to produce death, wilfully and feloniously did then and there shoot off and discharge with intent him the said ..... thereby then and there feloniously and wilfully to kill ..... by .....

.....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....,

.....

No. 6.

Information for assault, first degree (deadly weapon).

(Penal Law, § 240, subd. 1.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.. at the ..... in said county, ..., in and upon the said ..... then and there being feloniously did make an assault, and ..... the said ....., with a certain ....., which the said ..... then and there in ..... hand had and held, the said ..... being then and there a deadly weapon, and by such means and force as was then and there likely to produce death, feloniously did beat, strike, cut and wound with intent him, the said ....., then and there, feloniously and wilfully to kill by .....

.....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....,

.....

No. 7.

Information for assault in first degree by administering, etc., poison.

(Penal Law, § 240, subd. 2.)

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of ..... in said county; that on the ..... day of....., 19.., at the city of Albany, in said county, one C. D. did, with force and arms in and upon deponent then and there being, feloniously and wilfully make an assault and a certain deadly poison, to wit, ..., being a destructive or noxious thing, did then and there administer to (*or cause to be administered to or taken by*) said deponent so as to endanger the

life and with intent to kill said deponent (*or to commit a felony, to wit,* .....*upon the person or property of deponent* [*or*] *of E. F.*) (*here state all the facts*).

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 8.

Information for assault in second degree by administering, etc., poison.

(Penal Law, § 242, subds. 1, 2.)

STATE OF NEW YORK, City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of ....., in said county; that on the ..... day of....., 19.., at the city of Albany, in said county, one C. D. did with force and arms in and upon deponent then and there being, feloniously, wilfully, and unlawfully, and with intent to injure, make an assault, and a certain ....., to wit, ..., the use of which is dangerous to life or health, and being a destructive or noxious thing, *or with intent thereby to enable or assist himself* [*or E. F.*] *to commit a crime, to wit,* .....) did then and there administer to (*or caused to be administered to or taken by*) deponent, chloroform, ether, laudanum or ..... (*as the case may be*), unlawfully being an intoxicating narcotic, or anesthetic agent, by (*here state all the facts*).

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 9.

Information for assault, second degree.

(Penal Law, § 242, subd. 3.)

STATE OF NEW YORK, City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the .... of ....., in said county; that on the ..... of ....., 19.., at the city of Albany, in said county, one C. D. did with force and arms, in and upon the said deponent then and there being, feloniously, unlawfully, wilfully, and wrongfully make an assault, and him the said deponent did feloniously, unlawfully, wilfully, and wrongfully wound (*or inflict grievous bodily harm*) (*if with a weapon, add*) with ..... by (*here state all the facts*).

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 10.

Information for assault, second degree.

(Penal Law, § 242, subd. 4.)

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of ....., in said county; that on the ..... day of ....., 19.., at the city of Albany, in said county, one C. D. did with force and arms, in and upon deponent then and there being, feloniously, wilfully, and wrongfully make an assault, and him the said deponent did assault by the use of a certain ....., the said ..... being a weapon, instrument or thing likely to produce grievous bodily harm, by (*here state all the facts*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 11.

Information for assault, second degree, with intent to commit felony.

(Penal Law, § 242, subd. 5.)

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of ....., in said county; that on the .....day of ....., 19.., at the city of Albany, in said county, one C. D. did with force and arms, in and upon the said deponent then and there being, feloniously, unlawfully, wilfully, and wrongfully, with ....., with intent upon him, the said deponent to commit a felony, to wit, ..., by (*here state all the facts*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 12.

Information for assault on an officer, etc., second degree.

(Penal Law, § 242, subd. 5.)

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That on the ..... day of ....., 19.., at the city of Albany, in said county, one C. D. did with force and arms, in and upon deponent, he being then and there a ..... (*or*) a peace officer of the police force of the said city of Albany, in and for the said city of Albany, (*or*) a sheriff, deputy sheriff, constable, (*or*) marshal of said city and county of Albany, feloniously, wrongfully, unlawfully, and wilfully assault while he, the said deponent, so being a ..... (*or*) a peace officer, sheriff, deputy sheriff, constable,

(*or*) marshal aforesaid, was then and there lawfully engaged in the discharge of his duties as such ..... (*or*) peace officer of said police force of the said city of Albany, (*or*) a sheriff, deputy sheriff, constable, (*or*) marshal of said city and county of Albany, and him the said deponent (*or*) peace officer, sheriff, deputy sheriff, constable, (*or*) marshal as aforesaid, did feloniously, unlawfully, wrongfully, and wilfully resist in the discharge of his duties as such ..... (*or*) peace officer, sheriff, deputy sheriff, constable, (*or*) marshal by (*here state manner of assault in full*).

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19..

C. W. H.,
Police Justice (*or Justice of the Peace*),

No. 13.

Information for assault in second degree, with intent to ravish woman ten years and over.

(Penal Law, § 242, subd. 5.)

STATE OF NEW YORK, City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of ....., in said county, that, on the ..... day of ....., 19.., at the city of Albany, in said county, one C. D. did with force and arms, in and upon one E. F., she then and there being a woman of the age of ten years and upwards, in the peace of God and of the said People then and there being, violently, forcibly, and feloniously, did make an assault, and her, the said E. F., then and there violently, forcibly, and against her will, and without her consent, did assault with intent her, the said E. F., feloniously to ravish and carnally know (*here state the facts in full*).

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19..

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 14.

Information for assault, third degree.

(Penal Law, § 244.)

STATE OF NEW YORK, COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides at .....; N. Y., in said county; that on the .... day of ....., at ..... of ....., in said county, one ..... did make an assault upon this deponent, and him, the said deponent, did then and there beat, wound and ill-treat, without cause or provocation, by [state the facts].

.....

Subscribed and sworn to before me, this .... day of ....., 19..

.....,

.....

No. 15.

Information—Bawdy-house.

STATE OF NEW YORK, }
CITY AND COUNTY OF...., } *ss.:*

....., being duly sworn, says that he resides in .....
.....; that the premises known as No. ..... street in said city of ....., were, on the .... day of ....., 19.., kept, maintained, conducted and occupied by ..... as a common, ill-governed and disorderly house, and common bawdy-house and house of prostitution, and a resort for tipplers, drunkards, common prostitutes and reputed thieves, with other vile, wicked, idle, dissolute and disorderly men and women and reputed thieves, who, or most of whom, are in the practice of drinking, dancing, quarreling, fighting, whoring, rioting, disturbing the peace, cursing and swearing at almost all hours of the day and night, to the great damage and common nuisance of the people of the State of New York, there inhabiting, residing in the neighborhood, and passing thereby; that the grounds of deponent's knowledge are [here state grounds of deponent's knowledge and belief].

.....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....,
.....

No. 16.

Information for bigamy.

(Penal Law, § 340.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says, that he resides in the ..... of .....; that one ....., on the .... day of ....., 19.., at the ..... of ..... did marry one ....., and ....., the said ..... did then and there have for ....., and that the said ...., being so married afterward to wit on the .... day of ....., 19.., at the ..... of ....., in the county of ..... feloniously did marry and take as ..... one ....., and to the said ....., was then and there married, the said ..... being then and there living and in full life.

.....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....,
.....

No. 17.

Information for breach of the peace.

(Penal Law, § 720.)

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of .....; that on the ..... day of ....., 19.., one C. D., did seriously disturb and endanger the public peace by quarreling, fighting, and making a loud noise, and collecting a crowd in ..... street, in said city of Albany, (*or*) by (*here state the facts*).

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 18.

Information for perjury.

(Penal Law, § 1620.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of ....., that on the .... day of ....., 19.., at the ..... of ....., in the county of ....., a certain action in which ..... was plaintiff and ..... was defendant, was ..... before ....., and that upon the ..... of said action ..... appeared as a witness for and on behalf of the said ....., and was then and there duly and regularly sworn by the said ..... as such ....., that the evidence he should give relating to the matter in difference between the said parties should be the truth, the whole truth and nothing but the truth; and that upon the ..... of the said action it then and there became material to inquire whether ....., and that thereupon the said ....., being so sworn as a witness as aforesaid, did then and there on the ..... of said action falsely, wilfully and corruptly depose, swear and testify, among other things, that .... whereas, in truth and in fact, the ..... whereby the said ..... did then and there wilfully and corruptly swear falsely and commit wilful and corrupt perjury.

.....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....,

.....

No. 19.

Information for larceny—false pretenses.

(Penal Law, § 1290.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in the ..... of ..... N. Y.; that on the .... day of ....., 19.., at said ..... of ....., N. Y., one ....., committed the crime of ..... larceny in the ..... degree in that with intent to cheat and defraud ....., he, the said .... did then and there feloniously, unlawfully and designedly pretend and represent to the said ..... that [here state the facts and circumstances comprising the false representations] and the said ..... then and there believing the said false pretenses and representations so made as aforesaid, by the said ....., and being deceived thereby, was induced by reason of the false pretences and representations so made as aforesaid to deliver and did then and there deliver to the said ..... of the value of ..... dollars, of the proper moneys, valuable things, goods, chattels and personal property, and effects of the said ....., and the said ..... did then and there receive and obtain the said ..... of the value of ..... dollars from the said ..... of the proper moneys, valuable things, goods, chattels and personal property and effects of the said ..... by means of the false pretenses and representations aforesaid, with intent feloniously to cheat and defraud the said ..... of the said ..... of the value of ..... dollars; that in fact and in truth the pretenses and representations so made as aforesaid by the said ..... to the said ..... was and were in all respects utterly false and untrue; that in fact and truth the said ..... well knew the said pretenses and representations as by him made as aforesaid to the said ..... to be utterly false and untrue at the time of making the same.

That the said ....., by means of the false pretenses and representations aforesaid, feloniously, unlawfully, falsely, knowingly and designedly did receive and obtain from the said ..... of the value of ..... dollars of the proper moneys, valuable things, goods, chattels and personal property and effects of the said ....., with intent feloniously to cheat and defraud the said ..... of the same.

Taken, subscribed and sworn to before me,
this .... day of ....., 19..

.....,

.....

No. 20.

Information for larceny.

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says he resides at .....; that on the .... day of ....., 19.., in said city [or town] aforesaid, divers goods, chattels, money and property of deponent, of the kind, description and value following, to wit [give description and value with particularity], were feloniously taken, stolen and carried away from the possession of deponent by one ....., by [give manner of the taking].

.....

Taken, subscribed and sworn to before
me, this .... day of ....., 19..

.....

.....

No. 21.

Information for burglary, first degree, and larceny.

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., at the ..... of ..... in said county, ... with force and arms, about the hour of ..... in the night-time of the same day, the dwelling-house of another, to wit, of one ..... there situate, feloniously and burglariously did break into and enter by forcibly bursting and breaking an outer door of the said dwelling, or by ....., in which said dwelling-house there was then at the same time some human being, to wit, ..., with intent feloniously and burglariously to commit some crime therein, to wit, then and there the goods and chattels of the said ..... in the said dwelling-house then and there being, and then and there feloniously and burglariously to steal, take and carry away, and ..... of the value of ..... dollars, of the goods, chattels and property of the said ..... in the said dwelling-house then and there being, feloniously, burglariously, did steal, take and carry away by ....

.....

Taken, subscribed and sworn to before
me, this .... day of ....., 19..

.....,

.....

No. 22.

Information for larceny from the person.

[Penal Law, § 1296 (2).]

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., at the ..... of ....., in said county, ... with force and arms, from the person of ....., of the value of ..... dollars, of the goods, chattels and personal property of the said ..... then and there being found, feloniously did steal, take and carry away by [give manner of the carrying away].

.....

Taken, subscribed and sworn to before me, this .... day of ....., 19..

.....,

.....

No. 23.

Information for petit larceny.

(Penal Law, § 1298.)

STATE OF NEW YORK, }
City and County of Albany, } ss.:

A. B., being duly sworn, deposes and says: That he resides in said city of Albany; that on the ..... day of ....., 19.., in the city of Albany aforesaid, divers goods, chattels, money, and property of deponent of the value of less than twenty-five dollars, to wit, ... dollars, of the kind, description, and value as follows, to wit, (*here describe goods stolen and value of them in full*) were unlawfully, willfully, and feloniously stolen, taken and carried away from the possession of deponent (*or unlawfully obtained or appropriated*) by one C. D. (*here give all knowledge of deponent as to the manner of the theft, etc.*).

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 24.

Information for grand larceny.

(Penal Law, § 1294, subd. 2.)

STATE OF NEW YORK, }
City and County of Albany, } ss.:

A B., being duly sworn, deposes and says: That he resides in the .... of ..... in said county; that on the ..... day of ...., 19.., in the night-time of that day at the city of Albany, in said county, one C. D. did with force and arms, from the person of deponent, of the goods, chattels, and personal property of the said deponent, then and there being found, unlawfully, willfully, and feloniously steal, take, and carry away (*or unlawfully obtain or appropriate*) by (*here give all the knowledge of deponent as to the manner of the theft, etc.*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 25.

Information for grand larceny.

(Penal Law, § 1294, subd. 2.)

STATE OF NEW YORK, }
City and County of Albany, } ss.:

A. B., being duly sworn, deposes and says: That he resides ..... in said city of Albany; that on the ..... day of ..... 19.., in the night-time of said day, in the city of Albany aforesaid, one C. D. did unlawfully, wilfully, and feloniously steal, take, and carry away (*or unlawfully obtain or appropriate*) from the dwelling house, vessel (*or*) railway car of deponent, divers goods, chattels, money, and property of deponent, of the kind, description, and value as follows, to wit: (*here describe goods stolen and value of them in full*) by (*here give all the knowledge of deponent as to the manner of the theft, etc.*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 26.

Information for grand larceny.

(Penal Law, § 1294, subd. 3.)

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the city of Albany; that on the ..... day of ....., 19.., in said city of Albany, divers goods, chattels, money and property of the value of more than five hundred dollars, of the kind, description, and value as follows, to wit (*here describe goods stolen and value of them in full*) were unlawfully, wilfully, and feloniously stolen, taken, and carried away from the possession of deponent (*or unlawfully obtained or appropriated*) by one C. D. by (*here give all the knowledge of deponent as to the manner of the theft, etc.*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 27.

Information for grand larceny, second degree.

(Penal Law, § 1296, subd. 1.)

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the city of Albany; that on the ..... day of ....., 19.., in the said city of Albany, divers goods, chattels, money, and property of deponent, the value of more than twenty-five dollars, but not exceeding five hundred dollars, of the kind, description, and value as follows, to wit: (*here describe goods stolen and the value of them in full*) were unlawfully, wilfully, and feloniously stolen, taken and carried away from the possession of deponent (*or unlawfully obtained or appropriated*) by one C. D. the same not being taken from the person in the night-time, or from any dwelling house, vessel, or railway car in the night-time, by (*here give all knowledge of deponent as to the manner of the theft, etc.*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 28.

Information for grand larceny, second degree.

(Penal Law, § 1296, subd. 2.)

STATE OF NEW YORK,
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the city of Albany; that on the ..... day of ....., 19.., in the daytime of that day, at the said city of Albany, in said county, one C. D. did with force and arms, from the person of the deponent, of the goods, chattels, and personal property of the said deponent, then and there being found, unlawfully, wilfully, and feloniously steal, take, and carry away (*or unlawfully obtain or appropriate*) (*here describe goods stolen*).

A. B.

Taken, subscribed and sworn to before me,
this ..... day of ....., 19..

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 29.

Information for grand larceny, second degree.

(Penal Law, § 1296, subd. 3.)

STATE OF NEW YORK,
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the city of Albany; that on the ..... day of ....., 19.., in the said city of Albany, one C. D. did unlawfully, wilfully, and feloniously steal, take, and carry away from the possession of ..... (*or unlawfully obtain or appropriate*) a record of a court or officer (*or*) a writing, instrument, or record, to wit, ... kept, filed or deposited according to law with or in keeping of a public office or officer, to wit ....., by (*here state all the knowledge of deponent as to the manner of the theft, etc.*).

A. B.

Taken, subscribed and sworn to before me,
this ..... day of ....., 19..

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 30.

Information for selling etc., mortgaged property.

STATE OF NEW YORK,
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of .....; that on the ..... day of ....., 19.., one C. D. executed and delivered to deponent, a mortgage upon certain personal property, to wit: (*here describe it*) of the value of ..... dollars, that afterwards and on the ..... day ....., 19.., at the ..... of ..... while the said mortgage was a lien on the said personal property, the said C. D. did wilfully, maliciously, and unlawfully and with intent to defraud deponent, the mortgagee of said property, sell the aforesaid personal property so mortgaged as aforesaid, and disposed of the same without the knowledge or consent of deponent.

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19.. }

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 31.

Information for rape.

(Penal Law, § 2010, subds. 1-5.)

STATE OF NEW YORK,
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he is a ..... in said city of Albany; that on the ..... day of ....., 19.., one C. D., in said city of Albany, did with force and arms in and upon one E. F., she then and there being a female of the age of ..... years, not his wife, make an assault and did then and there violently, forcibly, and feloniously against her will and without her consent, have sexual intercourse with, ravish and carnally know the said E. F. (*here describe the assault fully*).

A. B.

Taken, subscribed and sworn to before me, this ..... day of ....., 19.. }

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 32.

Information for robbery, first degree.

(Penal Law, § 2124.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, says that he resides at .....; that, on the .... day of ....., at the city [or town] of ....., in said county ....., with force and arms, in and upon one ....., then and there being, feloniously did make an assault, and him, the said ..... did then and there feloniously put in fear of some immediate injury to his person and in danger of his life, did then and there feloniously and violently steal, take and carry away from the person, and against the will of the said ....., value of ..... dollars, of the goods, chattels and property of the said ..... by [state the manner of taking].

.....

Subscribed and sworn to before me,
this .... day of ....., 19..

.....,
.....

No. 33.

Information for robbery, second degree.

(Penal Law, § 2126, subds. 1, 2.)

STATE OF NEW YORK, } *ss.:*
City and County of Albany, }

A. B., being duly sworn, deposes and says: That he resides in the ..... of ..... in said county; that on the ..... day of ....., 19.., at the city of Albany, in said county, one C. D. did with force and arms, in and upon deponent then and there being, feloniously and wilfully make an assault, and him the said deponent did then and there feloniously use violence to and upon, and put in fear of some immediate injury to his person, (*or the person of one E. F., in his company*) and did then and there feloniously and violently steal, take, and carry away from the person and against the will of the said deponent the value of ..... dollars, of the goods, chattels, and property of the said deponent by (*here state the facts relating to the manner of the taking in full and property taken*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,
Police Justice (*or Justice of the Peace*).

No. 34.

Information for robbery, third degree.

(Penal Law, § 2128.)

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of ..... in said county; that on the ..... day of ....., 19.., at the city of Albany, in said county, one C. D. by feloniously, willfully, and unlawfully putting deponent in fear of some immediate or future injury to his property (*or to the person or property of a relative or member of his family*), did then and there feloniously, wilfully, and violently steal, take, and carry away from the person (*or in the presence of*) and against the will of the said deponent the value of ..... dollars, of the goods, chattels, and property of the said deponent, by (*here state all the facts relating to the manner of the taking in full and property taken*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 35.

Information for selling liquor without a license.

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of ..... in said county; that on the ..... day of ..... 19.., at No. ..... street, in the said city of Albany, one C. D., did wrongfully, unlawfully, and knowingly sell as a beverage to this deponent (*name of beverage*) the said (*name of beverage*) being in quantity less than five gallons; that the said A. B. did then and there drink the same in the presence of the said C. D. and paid him therefore the sum of .....; that the said C. D., at the time aforesaid had no license to sell strong and spirituous liquors, wines, ales, and beer as a beverage or otherwise in quantities less than five gallons at a time.

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 36.

Information for misdemeanor.

STATE OF NEW YORK, }
City and County of Albany, } *ss.:*

A. B., being duly sworn, deposes and says: That he resides in the ..... of .....; that one C. D., at the city of Albany, in the county of Albany aforesaid, on the ..... day of ....., 19.., did unlawfully and knowingly violate chapter ..... of the Laws of the State of New York ..... in relation to ....., in that he did (*here state all the facts in full of which the crime consisted*).

A. B.

Taken, subscribed and sworn to before me, }
this ..... day of ....., 19.. }

C. W. H.,

Police Justice (*or Justice of the Peace*).

No. 37.

Information for illegal registration.

(Penal Law, § 752. See People ex. rel. McShane v. Hagan, 164 N. Y. 570.)

CITY MAGISTRATE'S COURT, FOURTH DISTRICT.

City and County of New York, *ss.:*

Oswald J. Waite, of 585 Broadway, aged 37 years, being duly sworn, deposes and says that, on the 21st day of October, 1899, at the city of New York, in the county of New York, the same being a day duly appointed by law as a day for the general registration of the qualified voters of said city and county, for an election to be held on the 7th day of November, 1899, Frank A. McShane did personally appear before the inspectors of election of the fourth election district of the twentieth assembly district of the said city and county, at a meeting of the said inspectors of election then being held for the purpose of the general registration of the qualified voters of the said city and county, resident in the said election district, at the duly designated polling place of the said election district, and did then and there, at the said general registration of voters, feloniously cause his name to be placed upon the list or registry of voters as a qualified voter in said election district, residing at Bellevue Hospital, in the dormitory thereof, in said election district, of said assembly district, in said city, he, the said defendant, well knowing at the time that he was not, and on the day of election for which registration was had would not be a qualified voter in said election district.

That said Frank A. McShane was disqualified from voting in said district

for the reason that he was not given a legal residence in; that he is kept at an institution supported wholly or partly by public expense, in the premises afore mentioned, and contrary to section 34, subdivision 2, of the State Election Law.

Wherefore, deponent prays that the said Frank A. McShane may be apprehended and dealt with according to law.

OSWALD J. WAITE.

Sworn before me, this 6th day of November, 1899.

WILLARD H. OLMSTEAD,
City Magistrate.

COMMITMENT.

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within-named defendant guilty thereof, I order that he be held to answer the same, and he be admitted to bail in the sum of ten hundred dollars—and be committed to the warden and keeper of the city prison of the city of New York until he give bail.

Dated November 15, 1899.

Willard H. Olmstead,
City Magistrate.

INFORMATION FOR ILLEGAL VOTING.

(Penal Law, § 765. See People ex rel. McShane v. Hagan, 164 N. Y. 570.)

CITY MAGISTRATE'S COURT, FOURTH DISTRICT.

City and County of New York, *ss.:*

James Bradley of No. 585 Broadway, aged forty-four years, occupation, D. S. of election, being duly sworn, deposes and says that, on the 7th day of November, 1899, at the city of New York, in the county of New York, Frank A. McShane, now here, at No 341 East Twenty-sixth street, the polling place of the fourth election district of the twentieth assembly district, at a general election, held on said day, feloniously, and with fraudulent intent, did vote in violation of the statute in such case made and provided. Deponent further says that the said defendant was disqualified from voting for the reason that the defendant was at the time, while voting from the above-mentioned address, an inmate of Bellevue Hospital, wholly supported by public expense.

JAMES BRADLEY.

Sworn to before me, this 10th day of November, 1899.

WILLARD H. OLMSTEAD,
City Magistrate.

COMMITMENT.

Same as before.

WARRANT FOR ARREST.

City and county of New York, *ss:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK.

To any Peace Officer in the County of New York:

Information, upon oath, having been this day laid before me, that heretofore, to wit, on the 21st day of October, in the year of our Lord, one thousand eight hundred and ninety-nine, the same being a day duly appointed by law as a day for the general registration of the qualified voters of said city and county, one Frank A. McShane, at the city and county aforesaid, did personally appear before the inspectors of election of the fourth election district of the twentieth assembly district of the said city and county, at a meeting of the said inspectors of election then being duly held for the purpose of the general registration of the qualified voters of the said city and county, resident in the said election district, at the duly designated polling place of the said election district, and did then and there, at the said general registration of voters, feloniously register in the said election district, without having a lawful right to register therein.

You are therefore commanded forthwith to arrest the above-named Frank A. McShane, and bring him before me at the Fourth District City Magistrate's Court in this city, or, in case of my absence or inability to act, before the nearest or most accessible city magistrate in this county.

Dated at the city and county aforesaid, this 6th day of November, 1889.

WILLARD H. OLMSTEAD,

CITY MAGISTRATE.

WRIT OF CERTIORARI TO CERTIFY CAUSE OF DETENTION.

The People of the State of New York.

Magistrate Willard H. Olmstead, Esquire, one of the magistrates of the city of New York, and to the clerk of our Court of the General Sessions of the Peace, holden in and for the city and county of New York, and to

GREETING:

We command you, that you certify fully and at large to our Supreme Court of the State of New York, at a Special Term, part two thereof, to be holden at the new county courthouse in Chambers street, in the said city of New York, on the 16th day of November, 1899, at 10:30 o'clock in the forenoon, the day and cause of the imprisonment of Frank A. McShane, by you detained, as is said, by whatsoever name the said Frank A. McShane shall be called or charged, and have you then this writ.

Witness: Honorable Charles H. Van Brunt, presiding justice of our Supreme Court, of the first judicial department, at the City Hall, in said city of New York, on the 15th day of November, 1899.

By the Court,
WILLIAM SOHMER,
Clerk,
J. F. P.

William F. Howe and Abraham H. Hummel,
Attorney's for Relator.

I hereby allow within writs.
Dated this 15th day of November, 1899.

L. A. GIEGERICH,
Justice of the Supreme Court holding Special Term thereof.
Filed December 11, 1899.

No. 38.

Information for burglary third degree and larceny.

STATE OF NEW YORK, }
COUNTY OF ....., }

....., being duly sworn, deposes and says that he resides in the ..... of .....; that, on the .... day of ....., 19.., at the city of ....., in said county, ..., with force and arms, the ..... of one ..... there situate, feloniously and burglariously did break into and enter, the same being a ..... as above, in which divers goods and merchandise and valuable things were then and there kept for use, sale and deposit, to wit, the goods and chattels of the said ....., in said ..... as above, then and there being, then and there feloniously and burglariously to steal, take and carry away ..... of the value of ..... dollars, of the goods and chattels and property of the said ..... in the said ..... as above, so kept as aforesaid, then and there being feloniously and burglariously did steal, take and carry away by [state the manner of taking].

.....

Taken, subscribed and sworn to before me,
this ..... day of .....

.....,

.....

No. 39.

Information for criminally receiving stolen goods.

(Penal Law, § 1308.)

STATE OF NEW YORK,
COUNTY OF ....., }

....., being duly sworn, says that he resides in the ..... of .....; that, on the .... day of ....., 19.., at the city of ....., in said county, ..., being a person of evil name and fame and dishonest conversations and common buyer and receiver of stolen goods, with force and arms,..... of the value of ..... dollars, of the goods and chattels of ..... by ....., then lately before feloniously stolen of the said ....., unlawfully, unjustly and for the sake of wicked gain, did feloniously receive and have the said....., then and there well knowing the said goods and chattels to have been feloniously stolen; that the facts upon which this affidavit is based are as follows:.....

.....

Subscribed and sworn to before me,
this ....day of ....., 19..

.....,
.....

No. 40.

Information for libel.

(Penal Law, § 1340.)

STATE OF NEW YORK,
County of ....., } *ss.:*

....., being duly sworn, says that he resides in the ..... of .....; that on the .... day of ..... at ....., in said county, one ..... did falsely, maliciously and scandalously frame, make, write and compose in a certain false, scandalous and libelous writing of, concerning and against the said....., to the purport and effect following, to wit:..... and that with intention to scandalize and disgrace the said ..... and to bring him into contempt, infamy and disgrace, the said..... ..... did afterward, on the ..... day of ....., at the ..... aforesaid, openly deliver and publish to ..... the said false, scandalous and libelous ....., in that he did .....

.....

Subscribed and sworn before me,
this .... day of ....., 19..

.....,
.....

No. 41.

Information for assault second degree—weapon.

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the ..... day of ....., 19.., at the ....., in said county, ... with force and arms, in and upon the said ....., then and there being, did make an assault, and ..... the said ..... with a certain ...., the said ....., being then and there a weapon [or other instument], likely to produce grievous bodily harm, which the said ....., then and there, in his ..... hand, had and held, then and there did beat, strike and wound, with intent upon him, the said ....., then and there feloniously to do grievous bodily harm, without justifiable or excusable cause, by .....

.....

Subscribed and sworn before me,

the ..... day of .....

.....,

.....

No. 42.

Information for seduction.

(Penal Law, § 2175.)

STATE OF NEW YORK. }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that she resides in the ..... of .....; that on the .... day of ....., 19.., at the ..... in said county, ... with force and arms, under promise of marriage, did seduce and have illicit connection with one ....., she the said ..... then and there being an unmarried female of previous chaste character, by [state the manner and circumstances].

.....

Subscribed and sworn before me,

this ..... day of .....

.....,

.....

No. 43.

Information for forgery.

(Penal Law, § 884, *et seq.*)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, deposes and says that he resides in the ..... of .....; that one ..... at ....., in ..... with intent to injure and defraud, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting, a certain ....., which said false, forged and counterfeited ..... is as follows, that is to say [state the method of execution].

.....

Subscribed and sworn before me,
this ..... day of .....

.....,

.....

No. 44.

Information against disorderly person.

(Crim. Code, § 899, subd. 1.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

..... of No. ..... street, in the city of .....; being duly sworn, says that she is the wife of ..... of said city: that she complains of her said husband of being a disorderly person, according to section 899 of the Criminal Code, for that he has actually abandoned his wife and children without adequate support, and has left them in danger of becoming a burden upon the public, and he neglects to provide for them according to his means. Deponent further says that for several days last past he has actually abandoned his family without adequate support, and left them in danger of becoming a burden upon the public, and that such family is not possessed of property or of the means of obtaining a livelihood without the aid of such husband.

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 45.

Information against disorderly person.

(Crim. Code, § 899, subd. 2.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

..... of No. ..... street, in the city of ..... being duly sworn, says that she complains of her husband,..... of said city, of being a disorderly person, according to section 899 of the Criminal Code, for that he threatens to run away and leave his wife and children a burden upon the public, and that such family is not possessed of property or of the means of obtaining a livelihood without the aid of such husband.

.....

Subscribed and sworn before me,

this .... day of .....

.....,

.....

No. 46.

Information against disorderly person.

(Crim. Code, § 899, subd. 3.)

STATE OF NEW YORK, }
COUNTY OF ....., }

....., being duly sworn, says that he resides in .....; that one ..... is a person in said city [or town] of .....who pretends to tell fortunes, and where lost and stolen goods may be found, in that he possesses supernatural gifts, and to the end that he extort money [describe the manner of operation, etc.].

.....

Subscribed and sworn before me,

this .... day of .....

.....,

.....

No. 47.

Information against disorderly person.

(Crim. Code, § 899, subd. 4.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

..... being duly sworn, says that he resides at ..... that one ..... is a person who keeps a bawdy-house in the city of ..... and a house for the resort of prostitutes, drunkards, tipplers, gamblers, habitual criminals, and other disorderly persons, in that he.....

.....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 48.

Information against disorderly person.

(Crim. Code, § 899, subd. 5.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in .....; that one ..... is a person in the city of ....., who has no visible profession or calling by which to maintain himself, but who does so for the most part by gaming, in that he.....

.....

.....

Subscribed and sworn before me,
this .... day of .....

.....

.....,

No. 49.

Information against disorderly person.

(Crim. Code, § 899, subd. 6.)

STATE OF NEW YORK, }
COUNTY OF ..... } *ss.:*

....., being duly sworn, deposes and says that he resides in .....; that one ..... in the city of ..... is a juggler, common showman and mountebank, who exibits and performs for profit, puppet shows, wire and rope dancers, and other idle shows, acts and feats, in that he [describe acts complained of].

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 50.

Information against disorderly person.

(Crim. Code, § 899, subd. 7.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in .....; that one ....., in the said city of ....., is a person who keeps in a public highway or place in said city of ..... an apparatus or device for the purpose of gaming, and who goes about exhibiting tricks and gaming therewith, in that he [describe acts complained of].

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 51.

Information against disorderly person.

(Crim. Code, § 899, subd. 8.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in .....
.....; that one ..... is a person who plays in a public highway, or place, in said city [or town] with cards, dice and other apparatus or device for gaming that [set out the specific acts complained of].

.....

Subscribed and sworn before me,
this .... day of .....

....,

.....

No. 52.

Information against disorderly person.

(Crim. Code, § 899, subd. 9.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in .....; that ....., who is an habitual criminal, and adjudged such at ..... in ..... in the State of New York, on the .... day of ....., was found in ..... in said city of ..... as follows:
.....
in circumstances giving reasonable ground to believe that he was intending or waiting the opportunity to commit the crime of .....

.....

Subscribed and sworn before me,
this .... day of .....

....,

.....

No. 53.

Information against habitual criminal.

(Crim. Code, § 899, subd. 9; Crim. Code, § 512, subd. 1.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in .....; that ....., who is an habitual criminal, and adjudged such at ..... in ....., in the State of New York, on the .... day of ....., was found in ....., in said city of ..... in possession of....., a deadly and dangerous weapon, and in possession of ....., a tool, instrument and material adapted to and used by criminals for the commission of crime; said possession was as follows:.....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 54.

Information *for* malicious trespass.

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in ..... street in the ..... in the county aforesaid; that on the .... day of ....., in said city, one ..... did maliciously, unlawfully, willfully and wantonly .... by .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 55.

Information for overdriving, etc., any animal.

(Penal Law, § 185.)

STATE OF NEW YORK,
COUNTY OF .....,

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., at the ..... of ....., one ..... did overdrive, overload, torture, deprive of necessary sustenance, unnecessarily beat, cruelly beat, needlessly mutilate, [or] needlessly kill, a certain living creature, [or caused, procured and permitted, etc.], to wit: ..... by then and there .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 56.

Information for murder perpetrated from deliberate design.

(Penal Law, § 1044, subd. 1.)

STATE OF NEW YORK,
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that one ....., of ....., in the county of ....., on the .... day of ....., 19.., did then and there feloniously, wilfully and intentionally, and from a premeditated and deliberate design to effect the death of one ...., kill the said ..... by .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 57.

Information for manslaughter, first degree (killing unborn quick child).

(Penal Law, § 1050.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that .. he resides in the ..... of .....; that on the .... day of ....., 19.., at ....., in the county of ....., one .... did feloniously and willfully kill an unborn quick child by an injury to the mother of such child, in that .. he did .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 58.

Information for allowing disabled animals to lie in highways, etc.

(Penal Law, § 186.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., at the ....., one ..... then and theretofore being the owner, driver or in possession of a certain old, maimed and diseased horse or mule, which had theretofore been turned loose or left disabled in a certain street, lane or public place in said ....., to wit: ..... did unlawfully, willfully and wickedly, for more than three hours after knowledge of such disability, allow such horse or mule to lie in a certain street, lane or public place in said city therein, to wit: .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 59.

Information for carrying animals in a cruel manner.

(Penal Law, § 189.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., one ..... did willfully, unlawfully and wickedly carry or cause to be carried in or upon a ..... a certain creature, to wit: ..... in a cruel and inhuman manner, by then and there .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 60.

Information for murder perpetrated in commission of a felony.

(Penal Law, § 1044, subd. 3.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., at the ..... of ....., in the county of ....., one ..... did feloniously and willfully and intentionally, whilst engaged in the commission of a felony, to wit, the crime of ....., (or) in an attempt to commit the crime of ....., kill one .... in that he did .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 61.

Information for murder perpetrated by an act dangerous to others.

(Penal Law, § 1044, subd. 2.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., at the ..... of ....., in the county of ....., one ..... did feloniously and willfully and intentionally, by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, did kill one....., although without any premeditated design to effect the death of any particular individual, in that .. he did .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,

.....

No. 62.

Information for injury to animal, by act or neglect.

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that on the .... day of ....., 19.., at the ....., in the county of ....., one ..... did, by his act or neglect, willfully, wickedly and maliciously kill, maim, wound, injure, torture and cruelly beat a certain horse, mule, ox, cattle, sheep or other animal, to wit: ..... belonging to him the said ....., or to one ....., by then and there .....

.....

Subscribed and sworn before me,
this .... day of ....., 19..

.....,

.....

No. 63.

Information for malicious mischief.

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in .....; that one ..... on the .... day of ....., 19.., at the ..... of ..... did maliciously or wantonly injure or deface a monument or work of art, building, fence or other structure, or did destroy or injure an ornamental tree, shrub or plant, situated on a private ground or on a street, public place, public or private way or cemetery; or did paint or print upon, or in any other manner place upon or affix to any stone or rock, not a part of a buliding, or upon or to any bridge or tree, words, letters, characters or devices, stating, referring to or advertising, or intended to state, refer to or advertise the sale or manufacture of any property or article, profession, business, exhibition, amusement or place of amusement, or other thing, or did directly or indirectly cause any such act to be done, or shall aid therein, by .....
.....

.....

Subscribed and sworn before me,
this .... day of ....., 19..

.....,
.....

No. 64.

Information for mayhem.

(Penal Law, § 1400.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, deposes and says that he resides in the ..... of .....; that, on the .... day of ....., 19.., at the ..... of ....., one ..... then and there feloniously, willfully and with intent to commit a felony [or to injure, disfigure and disable, as the case may be], did inflict upon the person of ....., an injury, in that he, the said ....., did cut out or disable the tongue of one ....., put out the eye of one ....., slit or destroy the lip of one, or slit or destroy the nose of one ....., cut off or disable a limb or member, to wit: ..... of ....., on purpose .....
by .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,
.....

No. 65.

Information for search warrant.

(Crim. Code, § 792, subd. 3.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, says that he resides in .....; that the following property ..... is in the possession of ..... at ....., with the intent to use it as the means of committing a public offense, [or] is in the possession of ....., to whom said ..... delivered it for the purpose of concealing it, [or] preventing its being discovered; that the facts upon which this affidavit is based are as follows: .....

.....

Subscribed and sworn before me,
this .... day of .....

.....,
.....

No. 66.

Information for search warrant.

(Crim. Code, § 792, subd. 2.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, says that he resides in .....; that the following property ..... has been used as the means of committing the crime of ..... by ....., at ....., or is in the possession of ..... at ....., [or] is concealed in ..... in .....; that the facts upon which this affidavit is based are as follows: .....

.....

Subscribed and sworn before me,
this ..... day of .....

.....,
.....

No. 67.

Information for search warrant.

(Crim. Code, § 792, subd. 1.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, says that he resides in .....; that the following property .... has been stolen from ..... at .....; that ..... is the owner thereof; that said property has been stolen by ..... and is now in his possession, [or, as the case may be] in the possession of ..... at ..... the ..... aforesaid, [or] is concealed in ..... in said .....; that the facts upon which this affidavit is based are as follows: ....

.....

Subscribed and sworn before me,
this ..... day of .....

.....,
.....

No. 68.

Affidavit to obtain search warrant.

(Crim. Code, § 793.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, says that he resides at ....., in the said county of .....; that, at ..... aforesaid, on the night of ....., certain goods and chattels, to wit [describing them] were stolen and carried away from his residence without his knowledge or consent, and that there is probable cause for suspecting that one ....., residing at No. ..... street, in ....., is the party who stole and carried away said goods and chattels; and that said goods and chattels are now secreted in the house of the said .... at No. ..... street, in .....

.....

Subscribed and sworn before me,
this ..... day of .....

.....,
.....

No. 69.

Inventory and affidavit thereto of property taken under search warrant.

(Crim. Code, §§ 805, 806.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

Inventory of property taken by the undersigned, under and pursuant to the annexed warrant, made publicly and in the presence of ....., from whose possession it was taken, and of ....., the applicant for the warrant .....
....

Dated .....

.....
Policeman (or other officer).

I, ..., the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

.....

Subscribed and sworn before me,
this ..... day of .....

.....,
.....

No. 70.

Receipt for property taken under search warrant.

(Crim. Code, § 803.)

I,....., a constable [or other officer] of the ..... of ....., have taken under a search warrant issued by ...., a justice of the peace [or other officer] of the ....., from ....., from whom it was taken, or in whose possession it was found, or from ....., in the said ....., where the property hereinafter described was found, no person being there, the following described property, to wit: .....

.....,
Constable (or other officer).

No. 71.

Information against vagrant.

(Crim. Code, § 887, subd. 1.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., of the city of ....., being duly sworn, says that one ....., who is now in said city [or town] of .....,

is a person who, not having visible means of support, lives without employment, in that he [state circumstances and facts leading to that belief].

.....

Subscribed and sworn before me,
this ..... day of .....
....., ...

No. 72.

Information against vagrant.

(Crim. Code, § 887, subd. 2.)

STATE OF NEW YORK, } ss.:
COUNTY OF ....., }

....., being duly sworn, says that he resides in the ..... of .....; that ....., who resides in ....., is a person who, being an habitual drunkard, abandons, neglects and refuses to aid in the support of his family, in that he .....

.....

Subscribed and sworn before me,
this ..... day of .....
....., ...

No. 73.

Information against vagrant.

(Crim. Code, § 887, subd. 3.)

STATE OF NEW YORK, } ss.:
COUNTY OF ....., }

....., being duly sworn, says that he resides in the ..... of .....; that ....., who resides in ....., is a person who has contracted an infectious and other diseases in the practice of drunkenness and debauchery requiring charitable aid to restore him to health, in that he .....
Subscribed and sworn before me,
this ..... day of .....
....., ...

No. 74.

Information against vagrant.

(Crim. Code, § 887, subd. 4.)

STATE OF NEW YORK, } ss.:
COUNTY OF ....., }

....., being duly sworn, says that .....,

who resides at ....., is a common prostitute, who has no lawful employment whereby to maintain herself, in that she [state facts and circumstances on which affidavit is based].

.....

Subscribed and sworn before me,
this .... day of .....
....., ...

No. 75.

Information against vagrant.

(Crim. Code, § 887, subd. 5.)

STATE OF NEW YORK. }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in ....; that ....., in the said city of ....., is a person who wanders abroad and begs in said city aforesaid, and who goes about from door to door in said city, and places himself in the streets, highways, passages and other public places in said city, to beg and receive alms, in that he [state facts and circumstances].

.....

Subscribed and sworn before me,
this ..... day of .....
....., ...

No. 76.

Information against vagrant.

(Crim. Code, § 887, subd. 6.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in the ....; that ....., in said city [or town] of ....., is a person who wanders abroad and lodges in taverns, groceries, alehouses, watch and station-houses, outhouses, market places, sheds, stables, barns and uninhabited buildings, in said city, and in the open air, and not giving a good account of himself, in that he [set up facts of the case].

.....

Subscribed and sworn before me,
this ..... day of .....
....., ...

No. 77.

Information against vagrant.

(Crim. Code, § 887, subd. 7.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in .....
.....; that ....., in said city of ....., is a person who, having his face painted, discolored, covered and concealed, and being otherwise disguised in a manner calculated to prevent his being identified, appears in a road and public highway in said city, and in a field, lot, wood and inclosure in said city, in that [give facts and circumstances in detail].

.....

Subscribed and sworn before me,
this ..... day of .....

.....,
.....

No. 78.

Information against vagrant.

(Crim. Code, § 887, subd. 8.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides at .....
....., in the city [or village] of ....., and that .....
is a child between the ages of five and fourteen years, to wit: of the age of nine years, having sufficient bodily health and mental capacity to attend the public schools, and that on the .... day of ....., 19.., in the city of ....., the said ..... was found wandering abroad during the school hours in the streets of the city of ....., a truant without lawful occupation, in that [describe acts and circumstances].

.....

Subscribed and sworn before me,
this ..... day of .....

.....,
.....

No. 79.

Warrant for disorderly person.

(Crim. Code, § 899.)

POLICE COURT (OR JUSTICES' COURT).

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To .....:

Whereas, Information on oath has this day been duly made by .....

..... of the city of ....., in the county of ....., before me, ..., one of the police justices [or justices of the peace] of the said city of ....., that on the .... day of ....., 19.., at the city of ....., in said county, and for several days last past, one ..... was and is* a disorderly person, for that he has actually abandoned his wife and children without adequate support, and has left his wife and children in danger of becoming a burden upon the public; and has neglected to provide for his wife and children according to his means, against the peace of the people of the State of New York and the form of the statute in such case provided.

We, therefore, command you forthwith to apprehend and take the body of the said ..... and bring him before the said ....., at the ....., in the said city of ....., for examination, with this warrant and a return of your doings thereon indorsed, to answer the said complaint, and to be dealt with according to law. Hereof fail not at your peril.

Witness, the said ....., at the city of ....., in the county aforesaid, the .... day of .....

.....,
Police Justice (*or Justice of the Peace*).

NOTE.—To adapt the above form for each subdivision of § 899, insert after the star in the above, the substance of each subdivision as the case requires.

No. 80.

Return to warrant against disorderly person.

By virtue of the within warrant I have arrested the within named ....., and now have him before the magistrate by whom this warrant was issued.

Dated, etc.

.....
Constable (or other officer).

No. 81.

Commitment of disorderly person.

(Crim. Code, § 193.)

The within named ..... having been brought before me under this warrant, is committed for examination to the sheriff of the county of .....

A. B.,
Justice of the Peace, etc.

No. 82.

Warrant of arrest.

(Code Crim. Proc., § 151.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

In the name of the People of the State of New York:

To any Sheriff, Constable, Marshal, or Policeman in this State [or in the

County of ....., as the case may be, as provided in sections 155 and 156]:

Information on oath having this day, by information, been laid before me that the crime of [designating it] has been committed and accusing Richard Roe thereof,

You are therefore commanded forthwith to arrest the said Richard Roe, and bring him before me, at the police court [or other court], in the city of ....., or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at the city of ....., this ..... day of ..... 19..

JOHN JONES.

Police Justice [or Justice of the Peace, as the case may be].

No. 83.

Order that arrest be made on Sunday.

(Crim. Code, § 170.)

I do hereby order and direct that the arrest on the within warrant may be made on Sunday or at night.

A. B.,
Justice of the Peace, etc.

No. 84.

Warrant against vagrant.

(Crim. Code, § 887.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To .....:

Whereas, information on oath has this day been made by..... ....., of the ..... in said county, before ....., a justice of the peace [or police justice] of said county, that one ...., at the ..... of ....., in said county,* is a person who has no visible means to maintain himself, and wanders about without employment* [give facts and circumstances justifying issuing warrant], against the peace of the people of the State of New York and the form of the statute in such cases provided;

We, therefore, command you forthwith to take the body of the said ..... and bring him before ..... at the .... courtroom in ..... with this warrant and a return of your doings thereon indorsed, to be dealt with according to law. Hereof fail not at your peril.

Witness the said ....., at the ....., in the county aforesaid, the .... day of .....

A. B.,
Justice of the Peace (or Police Justice).

* NOTE.—In order to adapt the above form to any of the subdivisions of § 887, insert between the stars, in the above form, the substance of any particular subdivision as the case requires.

No. 85.

Affidavit to obtain order for stay.

(Crim. Code, § 347.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., of ....., N. Y., being duly sworn, says that he is the attorney for the defendant ....., charged by indictment with the crime of [state with particularity the nature of the crime; also the facts and circumstances which render a removal necessary]; that the next term of the County Court will be held on the .... day of ....., 19.., in and for the county of ..... aforesaid, and that this deponent is about to make a motion for the removal of the said indictment from the said County Court to the Supreme Court, and that there is not now time to move the court for such an order before the convening of the said County Court.

(Jurat.) .....

No. 86.

Order granting stay.

(Crim. Code, § 347.)

At a Special Term of the Supreme Court of the State of New York, held at the chambers of Hon. ....., in the city of ....., on the .... day of ....., 19..

PRESENT—Hon. ....., *Justice.*

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

On reading and filing the affidavit of ....., hereto annexed, and on motion of ....., attorneys for ....., it is hereby ordered that the trial, and all proceedings under the indictment against ....., be and are hereby stayed until the determination of the application of the defendant herein for an order removing said indictment, as set forth in said affidavit.

.....,

Justice Supreme Court.

No. 87.

Notice of motion for removal of an indictment from County Court to Supreme Court.

(Crim. Code, § 346.)

COUNTY COURT—..... COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

To.....:

SIR.— Please to take notice that on the petition and affidavit of..... ....., hereto annexed, I will apply to the Supreme Court of the State of New York, at a..... term thereof, to be held at the courthouse in the city of ....., N. Y., on the .... day of ....., 19...., at ..... o'clock, (A. M., of that day, or as soon thereafter as counsel can be heard, for an order removing the indictment in the above-entitled action from the County Court of said county to the Supreme Court, and for such other and further relief in the premises as may be just.

Dated, ..., 19..

Yours, etc.,

.....,

Defendant's Attorney.

No. 88.

Petition for removal of indictment from County Court to Supreme Court.

(Crim. Code, § 346.)

To the Supreme Court:

The petition of ....., respectfully shows, that at a ..... term of the County Court, held in and for the county of ....., in said State, on the ....day of....., 19...., an indictment was duly presented by the grand jury of the body of the people of said county to said court, against your petitioner, wherein your petitioner was charged with having on the .... day of ....., 19.., at the .....of ....., N. Y., committed the crime of ..... That a certified copy of said indictment is hereto annexed and made a part hereof. That your petitioner has fully and fairly stated the case to ...., his counsel, who resides at ....., N. Y., and that he has a good and substantial defense upon the merits of said indictment, as he is informed by said counsel, after such statement made as aforesaid, and verily *believes to* be true [state facts and circumstances showing why a removal of

the indictment becomes necessary]. That no previous application has been made for the order asked hereon.

And your petitioner will ever pray, etc.

.....

Dated ....., 19..

STATE OF NEW YORK, } ss.:
COUNTY OF ....., }

....., being duly sworn, says that he is the petitioner named in and who subscribed the foregoing application; that he has read the same, knows its contents, and that it is in all respects correct and true.

(Jurat.)

No. 89.

Order removing indictment to Supreme Court.

At a special term of the Supreme Court of the State of New York, held at the courthouse, in the ..... of ....., on the ..... day of ....., 19..

PRESENT—Hon. ....., *Justice.*

SUPREME COURT—..... COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

Upon reading and filing the foregoing petition of ....., and a certified copy of the indictment against the same charging him with ....., presented and filed at a County Court, held in and for the county of ....., on the .... of ....., 19..; and after hearing ....., attorney for defendant, in support of said application, and ...., district attorney of ..... county, in opposition thereto, it is hereby ordered that said indictment be and is hereby removed from the County Court of ..... county to the Supreme Court to be held in and for the county of .....

.....,
Justice Supreme Court.

No. 90.

Affidavit to set aside indictment.

(Crim. Code, § 313.)

..... COURT.

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

STATE OF NEW YORK, } ss.:
COUNTY OF ....., }

....., being duly sworn, says that he is the attorney for the above-named defendant, and that he has examined the indictment presented to this court by the grand jury at the present term, charging the said defendant with the crime of .....; that said indictment, when returned to this court, was indorsed "a true bill," but was not signed by the foreman of the grand jury as required by section 268 of the Criminal Code. Deponent further says that ....., the district attorney of this county, was present in the room at the time when the members of said grand jury were giving their votes on said indictment.

(Jurat.) .....

No. 91.

Order setting aside indictment.

(Crim. Code, § 317.)

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

At a Special Term of the Supreme Court of the State of New York, held, *etc.*

On reading and filing the affidavit of ....., in support of a motion to set aside the indictment in the above-entitled action, and after hearing said ....., in support of said motion, and Hon. ....., district attorney of ....., county, opposed thereto, and it appearing that the irregularities set forth in said affidavit are true, it is hereby ordered that said indictment be and the same is hereby set aside, and that said defendant be discharged from custody and his bail be exonerated [or that the case be again submitted to the grand jury for consideration].

By order of the court.

Dated, etc. .....

Clerk.

No. 92.

Order of discharge if new indictment is not found by next grand jury.

(Crim. Code, § 319.)

[Formal part as in No. 68.]

It appearing to the satisfaction of the court that the indictment of..... ..... was set aside at the last term of this court, and the present grand jury having been discharged without finding a new indictment

against said ....., now on motion of ....., attorney for said ....., it is hereby ordered that said ..... be discharged from custody and his bail be exonerated.

By order of the court.

Dated, etc.

....., *Clerk.*

No. 93.

Demurrer to indictment.

(Crim. Code, §§ 323, 324.)

SUPREME COURT—..... COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

The defendant ....., above named, demurs to the indictment, presented by the last grand jury, on the .... day of ....., 19.., charging him with the crime of ....., on the following grounds:

First. That the crime set forth in the indictment was committed in the county of ....., and not within the jurisdiction of this court.

Second. The acts charged in said indictment do not constitute a crime.

Wherefore this defendant asks judgment of the court that he be dismissed and discharged from the said premises specified in the said indictment.

Dated, etc.

....., *Attorney for Defendant.*

No. 94.

Answer to demurrer.

SUPREME COURT, County of .....

THE PEOPLE OF THE STATE OF NEW YORK
against
RICHARD ROE.

....., District Attorney of the county of ....., who prosecutes for the people, says that the said indictment and the matter therein contained in manner and form, as the same are there stated, are sufficient in law to compel the said Richard Roe to plead to the same; wherefore the said people ask the judgment of the court herein, that the said defendant be ordered to plead to said indictment, and proceed to trial under the same.

.....

District Attorney of ..... County.

No. 95.

Indictment; murder, first degree.

(Penal Law, §§ 1044, 1045. See People v. Van Wormer, 175 N. Y. 183.)
SUPREME COURT—COUNTY OF COLUMBIA.

THE PEOPLE OF THE STATE OF NEW YORK
against
WILLIS VAN WORMER, BURTON VAN WORMER, FREDERICK M. VAN WORMER, and HARVEY BRUCE. } January Term, 1902.

The grand jury of the county of Columbia, by this indictment, accuse Willis Van Wormer, Burton Van Wormer, Frederick M. Van Wormer, and Harvey Bruce, they and each of them, of the crime of murder in the first degree, committed as follows:

The said Willis Van Wormer, Burton Van Wormer, Frederick M. Van Wormer, and Harvey Bruce, they and each of them, on the 24th day of December, 1901, at the town of Greenport, in this county, did, on the day and at the place aforesaid, feloniously, willfully, with malice aforethought, and with the deliberate and premeditated design to effect the death of one Peter A. Hallenbeck, make an assault upon him, the said Peter A. Hallenbeck then and there being, and the said Willis Van Wormer, Burton Van Wormer, Frederick M. Van Wormer, and Harvey Bruce, they and each of them, with firearms or guns, commonly called revolvers or pistols, each loaded with gunpowder and leaden bullets, feloniously, willfully, with malice aforethought, and with the deliberate and premeditated design to effect the death of him, the said Peter A. Hallenbeck, the said Willis Van Wormer, Burton Van Wormer, Frederick M. Van Wormer, and Harvey Bruce, they and each of them did, then and there, with the said firearms or guns, shoot, injure, and mortally wound him, the said Peter A. Hallenbeck, and inflict upon the body and person of him, the said Peter A. Hallenbeck, to wit: in, upon, or through the body, lungs, liver, stomach, face, jaw, and arm of him, the said Peter A. Hallenbeck, gunshot wounds and injuries, from which gunshot wounds and injuries, he, the said Peter A. Hallenbeck, died on the day aforesaid, at the town and county aforesaid, and that the death of him, the said Peter A. Hallenbeck, was caused and produced by the aforesaid gunshot wounds, and injuries inflicted as aforesaid, and that the aforesaid gunshot wounds and injuries were inflicted as aforesaid, by the said Willis Van Wormer, Burton Van Wormer, Frederick M. Van Wormer, and Harvey Bruce, them and each of them, with force and arms, feloniously, willfully, and of their and each of their malice aforethought, and with the deliberate and premeditated design of them and each of them with force and arms, feloniously, willfully, and of their and each of their malice aforethought, and with the deliberate and premeditated design of them and each of them to effect the death of him, the said Peter A. Hallenbeck, the said Willis Van Wormer, Burton Van Wormer, Frederick M. Van Wormer, and Harvey Bruce, they and each of them, in manner and form aforesaid, and by means aforesaid, did kill and slay him, the said Peter A. Hallenbeck, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

ALFRED B. CHASE,
District Attorney of Columbia County.

No. 96.

Indictment; assault, first degree.

(Penal Law, §§ 240, 241. See People v. O'Connor, 82 App. Div. 55; aff'd 175 N. Y. 517.)

..... COURT—NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
WILLIAM O'CONNOR.

The grand jury of the county of New York by this indictment accuse William O'Connor of the crime of assault in the first degree, committed as follows:

The said William O'Connor, late of the borough of Manhattan, of the city of New York, in the county of New York aforesaid, on the sixteenth day of February, in the year of our Lord one thousand nine hundred and one, at the borough and county aforesaid, in and upon the body of one Lorenzo D. Cummings, then and there being, feloniously did make an assault and to, at, and against him, the said Lorenzo D. Cummings, a certain pistol then and there loaded and charged with gunpowder and one lead bullet, which the said William O'Connor, in his right hand then and there had and held, the same being a deadly and dangerous weapon, willfully and feloniously did then and there shoot off and discharge with intent him, the said Lorenzo D. Cummings, thereby then and there feloniously and willfully to kill against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

SECOND COUNT.

And the grand jury aforesaid by this indictment further accuses the said William O'Connor of the crime of assault in the second degree, committed as follows.

The said William O'Connor, late of the borough and county aforesaid, thereafter, to wit: on the day and in the year aforesaid, at the borough and county aforesaid, in and upon the body of the said Lorenzo D. Cummings, then and there being, feloniously did willfully and wrongfully make another assault, and to, at, and against him, the said Lorenzo D. Cummings, a certain pistol then and there charged and loaded with gunpowder and one lead bullet, which the said William O'Connor, in his right hand then and there had and held, the same being a weapon and instrument likely to produce grievous bodily harm, then and there feloniously did willfully and wrongfully shoot off and discharge against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

EUGENE A. PHILBIN,
District Attorney, New York County.

No. 97.

Indictment; rape, first degree.

(Penal Law, § 2010. See People v. Tench, 167 N. Y. 520.)

COUNTY COURT—ERIE COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
WILLIAM E. TENCH, *alias* WILLIAM THOMPSON.

The grand jury of the county of Erie, by this indictment, accuse William E. Tench, *alias* William Thompson, of the crime of rape in the first degree, committed as follows, to wit:

That said William E. Tench, *alias* William Thompson, on the 25th day of July, in the year of our Lord one thousand nine hundred, at the city of Buffalo, in the county of Erie, in and upon one Theresa Rosenhahn, the said Theresa Rosenhahn not being the wife of said William Tench, *alias* William Thompson, the resistance of the said Theresa Rosenhahn being then and there prevented by stupor and weakness of mind produced by certain intoxicating, narcotic, and anæsthetic agents of a kind to the grand jury aforesaid unknown, and a more particular description whereof cannot now be given, he, the said William E. Tench, *alias* William Thompson, then and there well knowing the said Theresa Rosenhahn to be in such a state of stupor and weakness of mind, feloniously and violently did make an assault, and her, the said Theresa Rosenhahn, then and there forcibly and against her will feloniously did ravish and carnally know and with her, the said Theresa Rosenhahn, did then and there commit and perpetrate an act of sexual intercourse, contrary to the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

SECOND COUNT.

And the grand jury of the county of Erie, aforesaid, do further accuse the said William E. Tench, *alias* William Thompson, of the crime of rape in the first degree, committed as follows:

That the said William E. Tench, *alias* William Thompson, on the 25th day of July, in the year of our Lord one thousand and nine hundred, at the city of Buffalo, in the county of Erie, in and upon one Theresa Rosenhahn, the said Theresa Rosenhahn not being the wife of the said William E. Tench, *alias* William Thompson, and the said Theresa Rosenhahn being then and there unconscious of the nature of the act, and the unconsciousness of the said Theresa Rosenhahn being known to the said William E. Tench, *alias* William Thompson, feloniously and violently did make an assault upon her, the said

Theresa Rosenhahn, then and there forcibly against her will, feloniously did ravish and carnally know, and with her, the said Theresa Rosenhahn, did then and there commit and perpetrate an act of sexual intercourse contrary to the form of the statute in such case made and provided, and against the peace of he people of the State of New York and their dignity.

THIRD COUNT.

And the grand jury of the county of Erie aforesaid, by this indictment, further accuse the said William E. Tench, *alias* William Thompson, of the crime of rape in the second degree, committed as follows:

That the said William E. Tench, *alias* William Thompson, on the 25th day of July, in the year of our Lord one thousand and nine hundred, at the city of Buffalo, in the county of Erie, in and upon Theresa Rosenhahn, a female, not the wife of the said William E. Tench, *alias* William Thompson, then and there being under the age of eighteen years, to wit, of the age of fifteen years, feloniously did make an assault, and the said William E. Tench, *alias* William Thompson, did then and there feloniously and wrongfully have sexual intercourse with and carnally know the said Theresa Rosenhahn, contrary to the form of the statute in such cases made and provided and against the peace of the people of the State of New York and their dignity.

THOMAS PENNEY,

District Attorney of Erie County.

Indictment; rape, first degree, short form.

(See People v. Page, 162 N. Y. 272.)

SUPREME COURT—COUNTY OF OTSEGO.

THE PEOPLE OF THE STATE OF NEW YORK
against
WILSON E. PAGE.

The grand jury of the county of Otsego, by this indictment, accuse Wilson E. Page of the crime of rape in the first degree, committed as follows:

The said Wilson E. Page heretofore, on the twentieth day of August, eighteen hundred and ninety-five, at the town of Butternuts, in this county, feloniously did make an assault upon one Etta Hopkins, a female not his wife, who was then and there under the age of sixteen years, and her, the said Etta Hopkins, then and there feloniously did ravish, and then and there did perpetrate an act of sexual intercourse with her against her will and without her consent, when her resistance was forcibly overcome.

FRANK L. SMITH,

District Attorney of Otsego County.

No. 98.

Indictment; rape, second degree.

[Penal Law, § 2010. See People v. Garner, 169 N. Y. 583.]

COUNTY COURT—Nassau County.

THE PEOPLE OF THE STATE OF NEW YORK
against
GEORGE GARNER.

The grand jury of the county of Nassau, by this indictment, accuse George Garner, late of the town of Hempstead, in the county of Nassau, and State of New York, of the crime of rape in the second degree, committed as follows:

The said George Garner, at the town of Hempstead, in the county of Nassau aforesaid, on or about the 10th day of November, in the year one thousand eight hundred and ninety-nine, with force and arms, in and upon the body of one Caroline P. Garner, she, the said Caroline P. Garner, being then and there a female under the age of eighteen years, to wit, of the age of fifteen years, and not the wife of him, the said George Garner, did make an assault, and feloniously, willfully, and unlawfully then and there did perpetrate an act of sexual intercourse with her, the said Caroline P. Garner, against the will of her, the said Caroline P. Garner, and without her consent, against the form of the statute in such case made and provided.

SECOND COUNT.

And the grand jury aforesaid, by this indictment, do further accuse the said George Garner of the crime of assault in the second degree, committed as follows:

The said George Garner, at the town and county aforesaid, with force and arms, feloniously, willfully, and unlawfully, in and upon the body of one Caroline P. Garner, she, the said Caroline P. Garner, being then and there a female not the wife of him, the said George Garner, did make an assault by forcibly placing his hand upon the body of the said Caroline P. Garner and beating, bruising, wounding, and ill-treating her, the said Caroline P. Garner, with intent then and there to commit a felony, to wit: with intent then and there to perpetrate with her, the said Caroline P. Garner, against her will and without her consent, an act of sexual intercourse against the form of the statute in such case made and provided.

JAMES P. NIEMANN,
District Attorney.

No. 99.

Indictment; omitting to provide for child.

(Penal Law, § 4820. See People v. Pierson, 176 N. Y. 201.)

COUNTY COURT—COUNTY OF WESTCHESTER.

THE PEOPLE OF THE STATE OF NEW YORK
against
J. LUTHER PIERSON.

The grand jury of the county of Westchester, by this indictment, accuses J. Luther Pierson of the crime of willfully, maliciously, and unlawfully violating the provisions of subdivision one of section two hundred eighty-eight of the Penal Code of the State of New York, committed as follows:

That the said J. Luther Pierson, late of the town of Mt. Pleasant, in the county of Westchester, and State of New York, on the 15th day of February, in the year one thousand nine hundred and one, with force and arms, at the town of Mt. Pleasant, in said county, did willfully, maliciously, and unlawfully omit, without lawful excuse, to perform a duty imposed upon him by law to furnish medical attendance for his said (J. Luther Pierson's) female minor child, under the age of two years, the said minor being then and there ill and suffering from catarrhal pneumonia, and he, the said J. Luther Pierson, then and there willfully, maliciously, and unlawfully neglecting and refusing to allow said minor to be attended and prescribed for by a regularly licensed and practicing physician and surgeon contrary to the form of the statute in such case made and provided.

GEORGE C. ANDREWS,
District Attorney of Westchester County.

No. 100.

Indictment; bigamy.

(Penal Law, § 340. See People v. Weed, 96 N. Y. 625.)

COURT OF SESSIONS OF THE COUNTY OF WESTCHESTER.

THE PEOPLE OF THE STATE OF NEW YORK
against
CHARLES H. WEED.

The grand jury of the county of Westchester, by this indictment, accuse Charles H. Weed of the crime of bigamy, committed as follows: that Charles H. Weed, late of the town of Poundridge, in the county of Westches-

ter, and State of New York, heretofore, to wit: on the twenty-fifth day of November, in the year one thousand eight hundred and seventy-five, at the town of Poundridge, in the county of Westchester, and State of New York, did marry one Louisa Bryson, and her, the said Louisa Bryson, then and there had for his wife, and that the said Charles H. Weed afterward, whilst he was so married to the said Louisa Bryson, as aforesaid, to wit: on the tenth day of May, in the year one thousand eight hundred and eighty-one, at the town of Poundridge, in the county of Westchester, aforesaid, feloniously, and unlawfully did marry and take to wife one Carrie Megal, and to her, the said Carrie Megal, was then and there married, whilst the said Louisa Bryson, his former wife, was then living, and he the said Charles H. Weed, having her, the said Louisa Bryson, then living, against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

NELSON H. BAKER,

District Attorney of Westchester County.

No. 101.

Indictment; arson, first degree.

(Penal Law, § 221. See People v. Fanshawe, 137 N. Y. 68.)

COURT OF GENERAL SESSIONS OF THE PEACE
OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK
against
JOHN M. D. FANSHAWE.

The grand jury of the city and county of New York, by this indictment, accuse John M. D. Fanshawe of the crime of arson in the first degree, committed as follows:

The said John M. D. Fanshawe, late of the twenty-first ward of the city of New York, in the county of New York aforesaid, on the third day of February, in the year of our Lord one thousand eight hundred and eighty-eight, at the ward, city, and county aforesaid, with force and arms, in the night time of the said day, the dwelling-house of one Ellen R. Van Duzer, then and there situate, there being then and there within the said dwelling-house some human being, to wit, the said Ellen R. Van Duzer, one Frank B. Doughty, and others, feloniously, willfully, and maliciously did set on fire and burn, against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

SECOND COUNT.

And the grand jury aforesaid, by this indictment, further accuse the said

John M. D. Fanshawe of the same crime of arson in the first degree, committed as follows:

The said John M. D. Fanshawe, late of the ward, city, and county aforesaid, afterward, to wit: On the day and in the year aforesaid, at the ward, city, and county aforesaid, with force and arms, in the night-time of the said day, the dwelling-house of one Frank B. Doughty, then and there situate, there being then and there within the said dwelling-house some human being, to wit, the said Frank B. Doughty, one Ellen R. Van Duzer, and others, feloniously, willfully, and maliciously did set on fire and burn against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

JOHN R. FELLOWS,

District Attorney.

No. 102.

Indictment; arson, third degree.

(Penal Law, § 223. See People v. Murphy, 135 N. Y. 450.)

..... COURT—..... COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
MICHAEL MURPHY.

The grand jury of the county of Niagara, by this indictment, accuse Michael Murphy of the crime of arson in the third degree, committed as follows:

That the said Michael Murphy, on or about the 22d day of January, in the year of our Lord one thousand eight hundred and ninety-one, at the city of Lockport, within said county of Niagara, with force and arms, feloniously, unlawfully, willfully, and maliciously did set on fire and burn a certain barn or structure, the same being a horse stable and carriage house, the property of one Elisha Moody, then and there situate, contrary to the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

P. F. King,

District Attorney of Niagara County.

No. 103.

Indictment; burglary, first degree.

(Penal Law, §§ 402, 407. See People v. Wilson, 151 N. Y. 403)

COURT OF GENERAL SESSIONS OF THE PEACE
OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK
against
HARRY WILSON, OTHERWISE CALLED CHARLES EDWARDS.

The grand jury of the city and county of New York, by this indictment, accuse Harry Wilson, otherwise called Charles Edwards, of the crime of burglary in the first degree, as a second offense, committed as follows:

Heretofore, to wit: at the Court of General Sessions of the Peace, holden in and for the city and county of New York, in the City Hall, in the City of New York, on the 10th day of February, in the year 1893, before the Honorable Frederick Smythe, recorder for the city of New York and justice of the said court, and said Harry Wilson, otherwise called Charles Edwards, by the name and description of Charles Edwards, was, in due form of law, convicted of a misdemeanor, to wit, petit larceny, upon a certain indictment then and there depending in said court against him, the said Harry Wilson, otherwise called Charles Edwards, by the name and description of Charles Edwards, as aforesaid, for that he, then late of the nineteenth ward of the city of New York, in the county of New York aforesaid, on the 24th day of January, in the year 1893, in the night-time of the same day, at the ward, city, and county aforesaid, the dwelling-house of one William E. Finn, there situate, feloniously and burglariously did break into and enter, there being then and there a human being in the said dwelling-house, with intent to commit some crime, therein, to wit, the goods, chattels, and personal property of the said William E. Finn, then and there being found, then and there feloniously and burglariously to steal, take, and carry away; and also for that he, then late of the ward, city, and county aforesaid, afterward, to wit: on the day and in the year aforesaid, at the ward, city, and county aforesaid, in the night-time of the said day, with force and arms, one pair of opera glasses, of the value of five dollars each; one watch, of the value of ten dollars; * * *; and two spoons of the value of five dollars each, of the goods, chattels, and personal property of one William E. Finn, from the dwelling-house of the said William E. Finn, there situate, then and there being found, from the dwelling-house aforesaid, then and there feloniously did steal, take, and carry away.

And thereupon, upon the conviction aforesaid, it was considered by the said Court of General Sessions of the Peace, and ordered and adjudged that the said Harry Wilson, otherwise called Charles Edwards, by the name and description of Charles Edwards, as aforesaid, for the misdemeanor and petit larceny whereof he had been so convicted as aforesaid, be imprisoned in the penitentiary of the county of New York for the term of one year, and that he pay a fine of $150 (one hundred and fifty dollars), as by the record of the said court doth more fully and at large appear.

And the said Harry Wilson, otherwise called Charles Edwards, late of the twenty-second ward of the city of New York, in the county of New York aforesaid, on the 28th day of December, in the year 1895, in the night-time of the said day at the ward, city and county aforesaid, with force, and arms, the dwelling-house of one Frances M. Barnes, there situate, feloniously and burglariously did break into and enter, there being then and there a human being within said dwelling-house, with intent to commit some crime therein, to wit: The goods, chattels, and personal property of the said Frances M. Barnes, then and there being, then and there feloniously and burglariously to steal, take, and carry away; the said Harry Wilson, otherwise called Charles Edwards, being then and there assisted by a confederate actually present, to wit: by one William King, against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

SECOND COUNT.

And the grand jury aforesaid, by this indictment, further accuse the said Harry Wilson, otherwise called Charles Edwards, of the crime of grand larceny in the first degree, as a second offense committed as follows: and further accuse said Harry Wilson, otherwise called Charles Edwards, late of the ward, city, and county aforesaid, having been so, as aforesaid, convicted of the said misdemeanor and petit larceny as set forth in the first count of this indictment, afterward, to wit: on the day and in the year aforesaid, at the ward, city, and county aforesaid, in the night-time of the said day, with force and arms, one diamond pin, of the value of three hundred dollars, * * * and one sealskin cape, of the value of three hundred and fifty dollars, of the goods, chattels, and personal property of one Frances M. Barnes, in the dwelling-house of the said Frances M. Barnes, there situate, then and there being found from the dwelling-house of the said Frances M. Barnes, there situate, then and there feloniously did steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

THIRD COUNT.

And the grand jury aforesaid by this indictment, accuse Harry Wilson, otherwise called Charles Edwards, of the crime of receiving stolen goods, as a second offense, committed as follows:

The said Harry Wilson, otherwise called Charles Edwards, late of the ward, city, and county aforesaid, having been so, as aforesaid, convicted of the said misdemeanor and petit larceny, as set forth in the first count of this indictment, afterward, to wit: on the day and in the year aforesaid, at the ward, city, and county aforesaid, with force and arms, the same goods, chattels, and personal property, described in the second count of this indictment of the goods, chattels, and personal property of one Frances M. Barnes, by a certain person or persons to the grand jury aforesaid unknown, then lately before feloniously stolen, taken, and carried away from the said Frances M. Barnes, unlawfully and unjustly did feloniously receive and have, said Harry Wilson, otherwise called Charles Edwards, then and there well knowing the said goods, chattels, and personal property to have been so feloniously stolen,

taken, and carried away, against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

JOHN R. FELLOWS,
District Attorney.

No. 104.

Indictment; forging and uttering forged instrument.

(Penal Law, § 887. See People v. Everhardt, 104 N. Y. 591.)

COURT OF GENERAL SESSIONS OF THE PEACE

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK
against
CHARLES J. EVERHARDT, Indicted as GEORGE HARTMAN, Otherwise Called GEORGE PETERS, Otherwise Called MASH MARKET JAKE, Otherwise Called CHARLES COKE, Otherwise Called CHARLES McGLOIN.

The grand jury of the city and county of New York, by this indictment, accuse Charles J. Everhardt, indicted as George Hartman, otherwise called George Peters, otherwise called Mash Market Jake, otherwise called Charles Coke, otherwise called Charles McGloin, of the crime of forgery in the second degree, committed as follows:

The said Charles J. Everhardt, otherwise called George Peters, otherwise called Mash Market Jake, otherwise called Charles Coke, otherwise called Charles McGloin, late of the city and county of New York, aforesaid, on the fifth day of September, in the year of our Lord one thousand eight hundred and eighty-five, with force and arms, at the city and county aforesaid, feloniously did forge, and cause and procure to be forged, and willingly act and assist in the forging, a certain instrument in writing, to wit: An order for the payment of money, of the kind commonly called bank checks, which said forged check is as follows, that is to say:

No. 50,131. NEW YORK, *Sept.* ..... 1885.

GERMAN-AMERICAN BANK.

Pay to the order of bearer ..... five hundred dollars,
$500/00. BALTZER & LICHTENSTEIN,

with intent to defraud, against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

SECOND COUNT.

And the grand jury aforesaid, by this indictment, further accuse the said Charles J. Everhardt, indicted as George Hartman, otherwise called George Peters, otherwise called Mash Market Jake, otherwise called Charles Coke, otherwise called Charles McGloin, of the crime of forgery in the second degree, committed as follows:

The said Charles J. Everhardt, indicted as George Hartman, otherwise called George Peters, otherwise called Mash Market Jake, otherwise called Charles Coke, otherwise called Charles McGloin, late of the city and county aforesaid, afterward, to wit: on the day and year aforesaid, at the city and county aforesaid, did feloniously utter and put off as true a certain forged instrument in writing, to wit, an order for the payment of money of the kind commonly called bank checks, which said forged bank check is as follows, that is to say:

No. 50,131. NEW YORK, *Sept.* ..... 1885.

GERMAN-AMERICAN BANK.

Pay to the order of bearer ..... five hundred dollars,

$500/00. BALTZER & LICHTENSTEIN,

with intent to defraud, he, the said Charles J. Everhardt, indicted as George Hartman, otherwise called George Peters, otherwise called Mash Market Jake, otherwise called Charles Coke, otherwise called Charles McGloin, then and there well knowing the same to be forged, against the peace of the people of the State of New York and their dignity.

RANDOLPH B. MARTINE,
District Attorney.

No. 105.

Indictment; grand larceny, first degree, and knowingly receiving stolen property.

(Penal Law, § 1294. See People v. Schooley, 149 N. Y. 99.)

COURT OF GENERAL SESSIONS OF THE PEACE
OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK
against
WILLIAM H. SCHOOLEY.

The grand jury of the city and county of New York by this indictment accuse William H. Schooley, of the crime of grand larceny in the first degree committed as follows:

The said William H. Schooley, late of the city of New York, in the county of New York, aforesaid, on the 14th day of December, in the year of our Lord, one thousand eight hundred and ninety, at the city and county aforesaid, with force and arms, four bonds and written obligations of the St. Louis

and Iron Mountain Railroad Company (a more particular description whereof is to the grand jury aforesaid unknown), of the value of one thousand dollars each of the goods, chattels, and personal property of one Ellen M. Gay, then and there being found, then and there feloniously did steal, take, and carry away against the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

SECOND COUNT.

And the grand jury aforesaid, by this indictment, further accuse the said William H. Schooley, of the crime of criminally receiving stolen property, committed as follows:

The said William H. Schooley, late of the city and county aforesaid, afterward, to wit, on the day and in the year aforesaid, at the city and county aforesaid, with force and arms, four bonds and written obligations of the St. Louis and Iron Mountain Railroad Company (a more particular description whereof is to the grand jury aforesaid unknown), of the value of one thousand dollars each, of the goods, chattels, and personal property of one Ellen M. Gay, by a certain person or persons to the grand jury aforesaid unknown then lately before feloniously stolen, taken, and carried away from the said Ellen M. Gay, unlawfully and unjustly did feloniously receive and have; the said William H. Schooley, then and there, well knowing the said goods, chattels, and personal property to have been feloniously stolen, taken, and carried away against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

DE LANCY NICOLL,
District Attorney.

No. 166.

Indictment; grand larceny, second degree.

(Penal Law, §§ 1296, 1297. See People v. Moran, 123 N. Y. 256.)

..... COURT.

THE PEOPLE OF THE STATE OF NEW YORK
against
THOMAS MORAN.

The grand jury of the city and county of New York, by this indictment, accuse Thomas Moran, of the crime of attempting to commit the crime of grand larceny in the second degree, committed as follows:

The said Thomas Moran, late of the city of New York, in the county of New York aforesaid, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and eighty-eight, in the daytime of the said day, at the city and county aforesaid, with force and arms, divers goods, chattels, and personal property, of a kind and description to the grand jury

aforesaid unknown of the value of ten dollars, of the goods, chattels, and personal property of a certain woman whose name is to the grand jury aforesaid unknown from the person of the said woman then and there feloniously did attempt to steal, take, and carry away, against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

JOHN R. FELLOWS,
District Attorney.

No. 107.

Indictment; adulterating milk.

(Agricultural Law, § 32; People v. Kibler, 106 N. Y. 321.)

COURT OF SESSIONS IN AND FOR ERIE COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
CHARLES KIBLER.

The grand jury of the county of Erie by this indictment accuse Charles Kibler of the crime of wrongfully selling adulterated milk, committed as follows: That the said Charles Kibler, at the city of Buffalo, in the county of Erie aforesaid, on the 25th day of August, in the year of our Lord one thousand eight hundred and eighty-five, wrongfully and unlawfully sold to one Frank P. Vandenburg, one pint of unclean, impure, unhealthy, adulterated, and unwholesome milk, contrary to the form of the statute in such case made and provided.

GEO. T. QUINBY,
Asst. and Acting District Attorney of Erie County.

No. 108.

Indictment; violation of labor law.

(Labor Law, § 110. See People v. Lochner, 177 N. Y. 145.)

SUPREME COURT—ONEIDA COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
JOSEPH LOCHNER.
} Indictment.

The grand jury of the county of Oneida, by this indictment, accuse Joseph Lochner of the crime of misdemeanor, second offense, to-wit: With the viola-

tion of article VIII, section 110, of chapter 415 of the Laws of 1897, known as the Labor Law of the State of New York, and the said defendant wrongfully and unlawfully required and permitted an employee working for him in his biscuit, bread, and cake bakery and confectionery establishment, at the city of Utica, in this county, to work more than sixty hours in one week, committed as follows:

That the said Joseph Lochner, on the 21st day of December, one thousand eight hundred and ninety-five, after having been duly arrested upon the complaint of one Frank Couverette, charged with violation of article VIII of the said Labor law in permitting his employees to work more than sixty hours in one week, plead guilty to the charge in and at the City Court of Utica, a court of competent jurisdiction, and was sentenced to pay a fine of twenty dollars, or in default thereof to stand committed for twenty days in the Oneida County Jail and the said defendant paid his said fine of twenty dollars. That the said defendant, after such conviction upon his plea of guilty, wrongfully, unlawfully, and knowingly, with an intent on his part to violate the law, permitted and required one Aman Schmitter, an employee in his employ, to work more than sixty hours in one week, during the week commencing April 19th and ending April 26, one thousand nine hundred and one, at his biscuit, bread, and cake bakery and confectionery establishment, situated at Nos. 82–84 South street, in the city of Utica, this county, and thereby committing the crime of misdemeanor, second offense, contrary to the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

TIMOTHY CURTIN,
District Attorney, Oneida County.

No. 109.

Indictment; sale of liquor to minor.

(Liquor Tax Law, § 29. See People v. Werner, 174 N. Y. 182.)

SUPREME COURT—WYOMING COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
CHARLES WERNER.

The grand jury of the county of Wyoming, by this indictment, accuse Charles Werner of the crime of trafficking in liquors contrary to the provisions of section 29 of the Liquor Tax Law, by selling and delivering liquor in a quantity less than five wine gallons at a time to a minor under the age of eighteen years, committed as follows:

That the said Charles Werner, late of the town of Java, in the county of Wyoming and State of New York, on the 18th day of November, in the year one thousand eight hundred and ninety-nine, at and in the town of Java in said county of Wyoming and State of New York, did wrongfully and unlawfully

sell and deliver liquors in a quantity less than five wine gallons at a time to one Leigh Moore, to wit: One pint beer, one pint lager beer, one pint fermented beer, one pint ale, one pint porter, one pint strong beer, one pint wine, one pint whiskey, one pint brandy, one pint whiskey and wine mixed, the said Leigh Moore then and there being a minor under the age of eighteen years, to-wit, of the age of fifteen years, and the said Charles Werner did then and there and thereby commit the crime of trafficking in liquors contrary to the provisions of section 29 of the Liquor Tax Law, by selling and delivering liquor in a quantity less than five wine gallons at a time to a minor under the age of eighteen years, contrary to the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

ELMER E. CHARLES,
District Attorney of Wyoming County, New York.

No. 110.

Challenge for actual bias.

(Crim. Code, § 380.)

SUPREME COURT—..... COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

The defendant herein challenges ....., a juror drawn to serve in this case, on the ground that said juror possesses such a state of mind regarding this case, and especially this defendant, that such juror cannot try the case impartially, and will greatly prejudice the substantial rights of this defendant.

.....,
Attorney for Defendant.

No. 111.

Affidavit showing handwriting of justice.

(Crim. Code, § 157.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he is acquainted with the handwriting of ....., the ..... justice who issued the annexed warrant, and that he knows the signature thereto attached to be the genuine signature of said ....., and that the said warrant was issued and signed by said ..... in his presence.

(Jurat.) .....

No. 112.

Affidavit proving handwriting of justice who issued warrant to be executed in another county.

(Crim. Code, § 157.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., being duly sworn, says that he resides in the city of Albany; that the name of ....., purporting to be signed to the above warrant, is the handwriting of ....., who is one of the police justices and justices of the peace of the ..... in the county of ....., by whom the above warrant was issued.

.....

Sworn before me, this ....
day of ....., 19..

.....,
.....

No. 113.

Indorsement upon warrant where the defendant is to be arrested in another county.

(Crim. Code, § 157.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

Due proof upon oath having been made before me, one of the justices of the peace of ..... county, that the name of ....., purporting to be signed to the warrant of arrest in the handwriting of the said ....., the justice of the peace in the said warrant named, I do hereby authorise and direct any officer to whom the said warrant is directed to execute the same within the said county of .....

Dated this .... day of ....., 19..

.....

No. 114.

Return to warrant of arrest.

I have arrested the within-named defendant, and have him here in my custody as within commanded.

Dated, etc.

.....

No. 115.

Return where all defendants cannot be found.

I have arrested the within ..... and ..... and have them here in my custody, but the within-named .... cannot be found.

Dated, etc. .....,
Constable

No. 116.

Return where magistrate issuing warrant is absent.

(Crim. Code, §§ 164 and 166.)

As within commanded, I have arrested the within-named defendant, and I hereby return that on making the arrest I forthwith brought the said defendant to the office of the magistrate who issued the warrant, but that the said magistrate was absent therefrom.

Dated, etc. .....

No. 117.

Return where magistrate issuing warrant has gone out of office.

I hereby certify that I have arrested the within-named defendant, and that at the time of such arrest, ..., the magistrate issuing the warrant, had ceased to be such magistrate by the expiration of his term of office [or otherwise].

Dated, etc. .....

No. 118.

Warrant after prisoner has escaped or been rescued.

(Crim. Code, § 828.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To any peace officer in this State [or in the county of ....., as the case may be]:

Information upon oath having been this day laid before me by ...., a ..... of this ....., to whom a warrant had heretofore been issued for the arrest of ....., that he had arrested the said ..... by virtue thereof, and that the said .... had afterward at the ..... of ....., in said county of ....., on the .... day of ....., 19.., escaped or been rescued] from the custody of said ..... You are therefore again commanded to forthwith apprehend the said ....., and

bring him before me at my office in the ..... of ....., in said ..... of ....., aforesaid, to be dealt with according to law, or in case of my absence or inability to act, before the nearest and most accessible magistrate in this county.

Dated, etc. .....

No. 119.

Warrant for the arrest of a fugitive from another state.

(Crim. Code, §§ 827, 828.)

[Formal part as in No. 118.]

Information upon oath having been this day laid before me by ...., that ..... had committed the crime of .... in the State of ..... on the .... day of ....., 19.., and is now a fugitive from justice in the county of ..... in this State.

You are therefore commanded forthwith to arrest the above-named .... and bring him before me at my office in the ..... of ....., N. Y., or in the case of my absence or inability to act, before the nearest and most accessible magistrate in this county.

Dated, etc. .....

No. 120.

Form of commitment of fugitive, etc.

(Crim. Code, § 829.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

The within-named ....., having been brought before me under this warrant, and it appearing to me that from an examination by me had, that he is guilty of the crime charged, and that he is a fugitive from justice as therein set forth, I therefore commit the said .... to the sheriff of the county of ..... [or to the keeper of the common jail] for the space of thirty days [or other reasonable time], or until he shall be discharged by due course of law.

Dated, etc. .....

No. 121.

Notice to district attorney of commitment of a fugitive from justice.

(Crim. Code, § 832.)

To ....., *District Attorney of* ..... *county:*

SIR.—Please to take notice that I have this day committed .....

....., a fugitive from justice from the State of ....., charged with the crime of ....., committed in said State of ....., to the sheriff of ..... county to await the action of the authorities of the State of ..... aforesaid.

Dated, etc.

Yours, etc.

.....

No. 122.

Notice to the governor, etc., of the State having jurisdiction of the fugitive.

(Crim. Code, § 833.)

To Hon. ....., Governor of the State of .....:

SIR.—The sheriff of ..... county, State of New York, has in charge and subject to your action one ....., charged with the crime of ....., committed within your State on the .... day of ....., 19... Awaiting your motion, I remain,

Very respectfully yours,

.....

District Attorney of ..... County, State of New York.

No. 123.

Commitment for examination.

(See Crim. Code, § 193.)

No. 124.

Commitment on being held to answer.

(See Crim. Code, § 214.)

No. 125.

Entry informing prisoner of his right to make a statement.

(Crim. Code, § 197.)

At the close of the examination of the witnesses on the part of the people, the defendant was informed by me of h.. right to make a statement in relation to the charge against h.., as required by section 196 of the Criminal Code, and after being so informed ..... did expressly waive h.. right to make the same.

.....,

Police Justice (or Justice of the Peace).

No. 126.

Statement of defendant—General form.

(Crim. Code, § 198.)

Question. What is your name and age? *Answer* .....

Question Where were you born? *Answer* .....

Question. Where do you reside and how long have you resided there? *Answer* .....

Question. What is your business or profession? *Answer* .....

Question. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation? *Answer* .....

Dated, etc.

.....,

Police Justice (or Justice of the Peace).

No. 127.

Authentication of statement.

(Crim. Code, § 200.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

I, ..., a justice of the peace of the ..... of ...., do hereby certify that at the close of the examination before me of the witnesses on the part of the people in the above-entitled action, I informed the defendant that it was his right to make a statement in relation to the charge against him, and the nature of the charge was stated to him; that the statement was designed to enable him, if he saw fit, to answer the charge, and to explain the facts alleged against him; that he was at liberty to waive making a statement, and that his waiver could not be used against him on the trial; that after being so informed, he made the following statement:

That at the close of said statement, I requested said defendant to sign the same, which he refused to do, giving as reasons for such refusal the following, to wit:

[Insert reasons for declining, etc.]

Dated this .... day of ....., 19..

.....

No. 128.

Entry of waiver by justice.

(Crim. Code, § 201.)

After the waiver of the defendant to make a statement [or after defendant had made a statement] the following witnesses were produced, sworn and examined by and on behalf of the defendant.

Dated, etc. .....

No. 129.

Testimony, how taken and authenticated.

(Crim. Code. § 204.)

(Title.)

Before Justice ....., ..., 19..

....., being duly sworn, deposes and says:

Question. What is your name and age? *Answer*.....

Question. Where do you reside? *Answer*.....

Question. What is your business or profession? *Answer*.....

[Insert evidence taken.]

I, ..., justice of the peace, ..., N. Y., in ..... county, do hereby certify that the above is the testimony given by ....., a witness sworn on the part of the defendant, who stated his name to be ....., his age to be ....., his business or profession to be .....

Dated, etc. .....

No. 130.

Indorsement for discharge of prisoner in court.

(See Crim. Code, § 207.)

No. 131.

Order of discharge when defendant is in jail.

(Crim. Code, § 207.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

To the keeper of the common jail of ..... county:

You are hereby required, on the receipt of this, to discharge from your custody ....., who was committed to jail by me, ..., a justice of the peace of ..... county, charged with the crime of .....

Dated, etc. .....

No. 132.

Order to commit.

(See Crim. Code, §§ 208, 212.)

No. 133.

Order for commitment without bail.

(See Crim. Code, § 209.)

No. 134.

Certificate of bail.

(See Crim. Code, §§ 210, 212.)

No. 135.

Undertaking to appear before magistrate issuing warrant taken in another county.

(Crim. Code, § 159.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

We, ... of ....., in the county of ....., by occupation a ....., defendant, and ....., of ....., in the county of ....., by occupation a ....., and ..... of ....., in the county of ....., by occupation a ....., sureties, acknowledge ourselves to owe the people of the State of New York each the sum of ..... dollars, to be made and levied out of our respective goods and chattels, lands, tenements, to the use of the said people if default shall be made on the conditions following:

The condition of this undertaking is that, Whereas, information has been made on oath, before ..... one of the justices of the peace [or police justice] of the county of ..... [or city of .....], that on the .... day of ....., 19.., at the ....., in said county [or city], the crime of ..... was committed, and accusing ..... thereof;

And Whereas, The said ....., justice of the peace [or other justice] as aforesaid, did, on the .... day of ....., 19.., duly issue a warrant for the arrest of said .....;

And Whereas, The said ..... has been duly arrested in the county of ....., and having required the officer making the arrest to take him before a magistrate in the said county of ....., he has this day been duly brought before me, the undersigned, one of the justices of the peace [or police justice] of said county [or city of .....];

Now, therefore, if the said ..... shall personally be and appear before the said ....., justice of the peace [or police justice] aforesaid, at his office [or police court room] in the ..... of ....., county of ....., on the .... day of ....., 19.., at .... o'clock, A. M., on that day, then this undertaking to be void, otherwise to remain in full force and effect, and we, the said sureties, will pay to the people of the State of New York the sum of ..... dollars.

.....
.....
.....

Taken and subscribed before me,
this .... day of .....
.....,
[Add acknowledgment and justification.]

No. 136.

Certificate granting application for bail.

(Code Crim Proc., §§ 561, 562.)

[Title as in form No. 21.]

STATE OF NEW YORK, } ss.:
COUNTY OF ....., }

I, ..., police justice [or justice of the peace] of the city [or town] of ....., do hereby certify that an application was made to me on the ..... day of ....., 19.., for the admission to bail of the above-named defendant, ..., who was held by me to answer the crime of .....; that the said application is hereby granted and the sum in which bail may be taken is fixed at ..... hundred dollars, with ..... suret...

Dated ....., this day ..... day of ....., 19..

.....

Police Justice (or Justice of the Peace).

No. 137.

Certificate denying application for bail.

(Code Crim. Proc., §§ 561, 562.)

[Title as in preceding form.]

STATE OF NEW YORK, } ss.:
COUNTY OF ....., }

....., police justice [or justice of the peace] of the ....., do hereby certify that an application was made to me on the ..... day of ....., 19.., for the admission to bail of the above-named defendant, who was held by me to answer the crime of ....., and the said application is hereby denied.

Dated at ....., this ..... day of ....., 19..

.....

Police Justice (or Justice of the Peace).

No. 138.

Order requiring notice of application for bail to be served on District Attorney.

(Code Crim. Proc., §§ 560, 561.)

Police Court of the City of .....

THE PEOPLE OF THE STATE OF NEW YORK
against
RICHARD ROE.

Upon an application this day made to me by the above-named defendant for

his admission to bail on the charge of ....., for which he has been held by me, ... and the said defendant having shown good and sufficient reasons why a notice of less than two days should be given to the district attorney of his application for admission to bail;

It is hereby ordered that a notice of ..... be served on the district attorney of ..... county of the application of the defendant for admission to bail on said charge.

Dated at ....., this ..... day of ....., 19..

.....

Police Justice (or Justice of the Peace).

No. 139.

Certificate or admission to bail.

(Crim. Code, § 160.)

....., justice of ....., of the ....., of ...., do hereby certify that I have, this .... day of ....., 19.., admitted the within-named .....to bail for his appearance before the magistrate named in the within warrant, and taken bail from..h.. accordingly.

.....

No. 140.

Undertaking on adjournment of examination.

(Crim. Code, § 192.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

An information having been laid before ....., a justice of the peace [or police justice], of the town [or city of] ....., in said county, charging ....., defendant, with the crime of ..... and he having been brought before said justice for an examination of said charge, and the hearing thereof having been adjourned to the .... day of ....., 19.. [not more than two days unless by consent].

Now, we, ..., defendant, of ..... and ....., residing at the ..... of ....., in said county, by occupation a ....., and ....., residing at the ..... of ....., in said county, by occupation a ....., sureties, do hereby jointly and severally undertake that the said ....., defendant, shall be and appear personally before the said magistrate, to be examined for the crime aforesaid, and shall so appear during such examination; and if he fail to perform either of the conditions we will pay the people of the State of New York ..... hundred dollars.

Dated at ..... of ....., New York, this .... day of ....., 19..

.....

.....

.....

[Add acknowledgment, justification and approval.]

No. 141.

Undertaking to grand jury in cases triable by special sessions.

(Crim. Code, § 211.)

..... COUNTY,
JUSTICE'S COURT [OR OTHER COURT], } *ss.:*

..... having been duly charged on information before ....., a justice of the peace of the town of ....., county of ....., with the offense of ....., and the said justice having informed him of his right to be tried by a jury after indictment, and did ask him how he would be tried, and he requiring to be tried by a jury after indictment; and after having so required to be tried the said justice did hold said ..... to answer to the next court to be held in and for the said county of ....., having authority to inquire by the intervention of a grand jury into offenses triable in said county of .....

We, ..., of ....., in the ..... of ....., by occupation a ....., and ..... of ....., in the ..... of ....., by occupation a ....., and ....., of ....., in the ..... of ....., by occupation a ....., undertake that said ..... shall appear and answer the charge above mentioned at the next court, to be held in and for the county of ....., having authority to inquire, by the intervention of a grand jury, into offenses triable in the said county of ....., and shall at all times render himself amenable to the process of the court; and if convicted, shall appear for judgment, and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the people of the State of New York the sum of ..... hundred dollars.

Dated the .... day of ....., 19..

(Signed) .....

Taken, subscribed and acknowledged before me,
the day and year last above mentioned.

.....,
Justice of the Peace (or other Justice).

[Add justification and approval.]

No. 142.

Undertaking of witness to appear without sureties.

(Crim. Code, § 215.)

Know all men by these presents, that I, ..., am held and firmly bound unto the people of the State of New York, in the sum of ..... dollars, to be paid to the people of the State of New York; for which payment, well and truly to be made, I bind myself, my heirs, executors, administrators and assigns, jointly and severally by these presents.

.....

Dated this .... day of ....., 19..

The condition of this obligation is such that if the above-named .... shall duly appear as a witness when properly summoned, on the trial of a certain action, wherein the people of the State of New York are plaintiffs, and ..... is defendant, on a charge of ...., and shall give his evidence therein on behalf of the said people, then this obligation shall be void and of no effect, otherwise to remain in full force and effect, and the said ..... will pay to the people of the State of New York the said sum of one hundred dollars.

....., *Justice of the Peace.*

[Add acknowledgment, etc.]

No. 143.

Security for appearance of witness.

(Crim. Code, § 216.)

JUSTICES' COURT (OR OTHER COURT).

THE PEOPLE OF THE STATE OF NEW YORK *against* .....

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

The above-named defendant having been arrested charged with the crime of ....., and having been held to answer on the deposition and evidence of ....., before Justice ....., of ....., N. Y., and the said justice being satisfied by proof on oath, that said ..... intends to depart the State and not to appear and testify at the trial of this cause, and the said justice having required an undertaking with sureties, for his appearance at such trial:

Be it remembered, that on this .... day of ....., 19.., ..., of ....., in the county of ....., by occupation a ....., and ....., of ....., in the county of ....., by occupation a ....., and ....., of ....., in the county of ....., by occupation a ....., sureties, personally came before me, ..., justice of the peace of the county of ....., and acknowledged himself, each, to be indebted to the people of the State of New York, in the sum of ..... hundred dollars, to be made and levied of his goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this undertaking is such that if the above-bounden .... shall personally appear and testify at the next ..... court to be held in and for the said county of ....., to give evidence as a witness on behalf of the said people, against ....., arrested and held to answer the charge of .....; as well to the grand jury as to the petit jury, and do not depart the said court without leave, then this undertaking to be void and

of no effect; otherwise to remain in full force and virtue. The said sureties will pay to the people of the State of New York, the said sum of ..... hundred dollars.

Dated .... day of ....., 19..

(Signed.)

.....

[Add acknowledgment, justification and approval.]

No. 144.

Order that witness give security for appearance.

(Crim. Code, § 216.)

JUSTICES' COURT (OR OTHER COURT).

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

Whereas, ..., a witness examined before me, on the part of the people, in the above action, is a material witness for the people therein;

And Whereas, I am satisfied, by proof on oath, that there is reason to believe that the said ..... will not appear and testify on the part of the people, at the next ..... to be held in and for the county of ....., on the .... day of ....., 19.., to which the statements and depositions in the above action are to be sent, I do hereby order that the said ..... enter into a written undertaking in the sum of ....., with ..... sureties that he will appear and testify on the part of the people at said next term of the ..... court.

Dated, etc. (Signed by justice.)

No. 145.

Commitment of witness who has refused to give an undertaking to appear and testify.

(Crim. Code, § 218.)

POLICE COURT (OR OTHER COURT).

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To the sheriff of the county of (or to the keeper of the city prison in the city and county of New York):

Whereas, It is made to appear to me, ..., a justice of the peace of ....., N. Y., on the oath of good and sufficient witnesses, that ..... is a material witness in a matter wherein .....

..... is accused by the people of the State of New York of the crime of ..... [state facts and circumstances], and that the said .... is about to leave the State, as he is satisfied by due proof on oath, to avoid being called as a witness on the part of the people therein;

And Whereas, The said ....., refuses, as required by me, to enter into an undertaking in the sum of one hundred dollars, for his personal appearance at court, when duly subpœnaed to give evidence on behalf of the people against said .....,

You are therefore commanded to receive the said ....., and detain him in your custody until he shall give the security required, or be otherwise legally discharged.

Dated, etc. .....

No. 146.

Warrant of commitment when witness refuses to furnish sureties.

(Crim. Code, § 218.)

POLICE COURT (OR OTHER COURT).

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To .....:

Whereas, It has been made to appear on the oath of good and sufficient witnesses that ..... is a material witness in a matter wherein the people of the State of New York are plaintiffs, and ...., the defendant, is accused by the said plaintiffs of the crime of ..... [state facts and circumstances], and that the said .... is about to leave the State to avoid giving his testimony at the trial thereof, at the instance of the said people, and whereof the said ..... refuses, as required by me, to give security, as fixed by me, for his appearance at the trial of the said cause when duly subpœnaed. Now you are hereby commanded to receive the said ..... into your custody, and detain him until he gives the required security, or is otherwise legally discharged.

Dated, etc. .....

No. 147.

Information for surety of the peace

(Crim. Code, § 84.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., of the ..... of ....., N. Y., upon oath, complains that ....., of the ..... of ....., in the county of ....., N. Y., has threatened to commit a crime against the person [or property] of this complainant, to wit: to [state the threat as the case may be] and that complainant has just cause to fear that said ..... will carry into effect said threats.

This complaint is made not from malice or ill will toward said ...., but simply because of the threats above set forth and a belief that said ..... will carry them into effect.

Wherefore, This complainant prays that surety of the peace may be granted to him against the said ....., and that a warrant may issue against the said ....., and that he be dealt with according to law.

(Jurat.) .....

No. 148.

Examination of complainant and witnesses upon foregoing complaint.

(Crim. Code, § 85.)

(Title of Court.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

The examination of ....., the complainant herein, and of ..... [names of the witnesses], taken on oath before me, ..., a justice of the peace [or police justice], of the ..... of ....., N. Y., at the town [or city or village] in said county on the .... day of ....., 19.., upon the information of ...., for the purpose of obtaining surety of the peace against one .....:

The said ....., being by me duly sworn, says: [here set forth, with particularity, the proof of the facts alleged in the information] And the said [names of the witnesses], being by me duly sworn, says: that he resides in the ..... of ....., N. Y.; that he was present when the threats against the said ..... were made by the said ...., as alleged in the information herein, and that such threats were as follows: [state with particularity the evidence tending to establish the facts alleged in the information]

.....
.....
Taken, subscribed and sworn before me, ...
this .... day of ....., 19..
.....,
Police Justice (or Justice of the Peace).

No. 149.

Warrant of arrest.

(Crim. Code, § 86.)

(Title of Court.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To the sheriff of said county, or to any constable, marshal or policeman of the city or town, GREETING:

Whereas, ..., of the ..... of ....., in said county of ....., did, on the .... day of ....., 19.., make complaint in writing and upon oath, before me, that ....., of the ..... of ....., did threaten to commit grievous offenses against the roperty [or person] of him, the said ..... [state the specific offense threatened with particularity], and has demanded surety of the peace against the said ....., and an examination on oath having been taken by me at ....., N. Y., aforesaid, and it appearing from such examination that there is just cause to fear that said .... would carry his said threats into effect,

This is, therefore, to command you, in the name of the people of the State of New York, forthwith to arrest the said ....., and bring him before me, to be dealt with according to law.

Given under my hand at the ..... of ....., county of ..... and State of New York, this .... day of ....., 19..

.....,
Police Justice (or Justice of the Peace).

No. 150.

Undertaking to keep the peace.

(Crim. Code, § 89.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

Whereas, An information was laid before ....., justice of the peace [or a police justice], of the ..... of ....., N. Y., on the .... day of ....., 19.., that ..... had at said ....., on the .... day of ....., 19.., threatened to commit the crime of ....., against the person [or property] of ...., and said magistrate having examined on oath the complainant [and witnesses], and reduced h.. examination to writing, and caused the same to be duly subscribed:

Whereupon, A warrant was issued, and proceedings were duly taken before such magistrate, and if appearing by the evidence that there is just reason to fear the commission of said crime, and the said person complained of having been required to give security in the sum of ..... dollars to keep the peace, pursuant to the provisions of section 89 of the Criminal Code,

Now, therefore, We, the undersigned, residing in the ..... of ....., N. Y., do hereby acknowledge ourselves to be jointly and severally indebted to the people of the State of New York, in the sum of ..... dollars ($.....), to be well and truly paid if default shall be made in the conditions following:

The conditions of this undertaking are such, That if the above-bounden ....., shall personally appear at and abide the order of the next County Court of the county of ....., N. Y., held for the trial of indictments, and shall in the meantime keep the peace toward the people of this State, and particularly toward the said ....., the

complainant, then this undertaking to be void, otherwise to remain in full force.

.....

Dated at ....., N. Y., ...
this .... day of ....., 19..

Acknowledgment of undertaking.

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

On this ..... day of ....., 19.., before me, the subscriber, personally came ....., and to me personally known to be the same persons described in and who executed the above undertaking, and severally acknowledged to me that they executed the same.

.....,
Police Justice (or Justice of the Peace, or Police Justice.)

Affidavit by sureties to undertaking.

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

....., one of the sureties to the foregoing undertaking being sworn, says that he is a resident of and a ..... holder within the State of New York, and is worth ..... dollars [twice the sum specified in the undertaking], over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

.....

Sworn to before me, this ....
day of ....., 19..

.....,

No. 151.

Warrant of commitment on neglect to give security.

(Crim. Code, § 90.)

(Title of Court.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK.

To any constable of the county of ....., and to the keeper common jail of said county, GREETING:

Whereas, ..., of the ..... of ....., co.. ....., N. Y., was charged upon an information duly laid befo the undersigned justice of the peace [or police justice], of the ...., N. Y., with threatening to commit the crime of ..... against the ....., by ..... And su proceedings were thereupon had before me, pursuant to the provisions of th Criminal Code; that there appeared just reason to fear the commission o said crime by said .....

Whereupon, He, the said ....., was required by me to enter into an undertaking in the sum of ..... dollars, with sufficient suret..., to abide the order of the next County Court to be held in and for said county for the trial of indictments; and in the meantime to keep the peace toward the people of this State, and particularly toward the complainant,

And Whereas, Said ..... has neglected and omitted to give said undertaking so required of him,

These are, therefore, To command you, the said constable, forthwith to convey and deliver h...., the said ....., into the custody of the keeper of the common jail of said county; and you, the said keeper, are hereby required to receive the said ..... into your custody in the said jail, and him safely keep and detain there, until he shall find such sureties as aforesaid, or be discharged according to law.

Given under my hand, at the said ..... of ....., this .... day of ....., 19..

.....,

Justice of the Peace (or Police Justice).

No. 152.

Warrant to commit a vagrant on plea of guilty.

(Crim. Code, § 892.)

JUSTICE'S COURT (OR OTHER COURT).

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To ... ., and to the superintendent and principal keeper of the almshouse or penitentiary of the said county, GREETING:

Whereas, ... has this day been duly examined, tried and convicted before me, ..., one of the justices of the peace in and for the ..... and county of ..... and police justice of said city, upon the complaint on oath of ..... of being, at the ..... aforesaid, on this present day, a vagrant, for that the said ....., at the ..... aforesaid, on this present day, is a person who, not having visible means to maintain h....., lives without employment

And Whereas, The said justice immediately, and before any further proceedings were had, informed the said ..... of the charge against h..., and of h.. right to the aid of counsel in every stage of the proceedings, and the said charge was distinctly read and stated to the said ....., and ..he, the said ....., was given a reasonable time to send for and advise with counsel:

And Whereas, ..he, the said ....., did then and there plead guilty to the said charge, and in the presence of the said court, by said plea of guilty, did voluntarily admit and confess that ..he, the said ...., was and is a vagrant within the intent and meaning of the statute; and it was adjudged and determined by me that the said .....

....., who is not a notorious offender, and is a proper object for such relief, should be committed to the almshouse, or being a notorious offender, and an improper person to be sent to the almshouse, should be committed to and confined in the almshouse or penitentiary of said county for the term of ..... at hard labor.

Now, therefore, You the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said ..... into the custody of the said superintendent and principal keeper of the said almshouse or penitentiary. And you, the said superintendent and principal keeper, are hereby commanded to receive the said ..... into your custody, in the said almshouse or penitentiary, for the term of .... at hard labor, and h... there safely keep until the expiration of the said .....:.

Given under my hand, at the ..... aforesaid, this .... day of .....

.....,

Justice of the Peace (or Police Justice).

No. 153.

Warrant to commit a vagrant after trial.

(Crim. Code, § 892.)

POLICE COURT (OR OTHER COURT).

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To ....., and to the superintendent and principal keeper of the almshouse and penitentiary of the said county, GREETING:

Whereas, On the .... day of ....., ... was brought before me, ..., one of the justices of the peace in and for the ..... and county of ..... or police justice of said ....., charged on the oath of ....., which oath was believed by me, the said justice, with, on this present day, at the ..... of ....., ..., and being a vagrant within the intent and meaning of the statute;

And Whereas, The said justice, immediately and before any further proceedings were had, informed the said ..... of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said ....., who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person;

And Whereas, The said testimony was given and evidence was had in the presence and hearing of the said ....., he, the said ...., having previously thereto been allowed a reasonable time to send for and advise with counsel;

And whereupon the said justice did thereupon adjudge and determine that the said ..... was guilty of the aforesaid charge, and the said ..... was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that ....., the said ...., on this present day, at the city of ....., aforesaid, was .... and is a vagrant within the intent and meaning of the statute; and it was adjudged and determined by me that the said ...., who is not a notorious offender, should be committed to the almshouse of the said county of ....., or being a notorious offender and improper person to be sent to the almshouse, should be committed to and confined in the almshouse or penitentiary of said county for the term of ..... at hard labor;

Now, therefore, You, the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said ..... into the custody of the said superintendent and principal keeper of the said almshouse or penitentiary. And you, the said superintendent and principal keeper, are hereby commanded to receive the said ..... into your custody, in the said almshouse or penitentiary, for the term of ...., at hard labor, and ..... there safely keep until the expiration of the said .....

Given under my hand, at the ..... aforesaid, this .... day of ....,

Justice of the Peace (or Police Justice).

No. 154.

Warrant to commit disorderly person for not giving security to support his wife and children, etc.—Plea of guilty.

(Crim. Code, § 903.)

JUSTICES' COURT (OR OTHER COURT).

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To .....:

Whereas, On the .... day of ....., ... was brought before me, ..., one of the justices of the peace in and for the ..... and county of ....., or police justice of said city, charged upon the complaint on the oath of ..... with having, on the .... day of ....., 19.., at the ..... aforesaid, been a disorderly person, for that the said ....

And, Whereas, The said justice immediately, and before any further proceedings were had, informed the said ..... of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said ....., and he, the said ....., was given a reasonable time to send for and advise with counsel;

And, Whereas, He, the said ....., did then and there plead

guilty to the said charge, and in the presence of the said court, by said plea of guilty, did voluntarily admit and confess that he, the said ...., at the ..... aforesaid, on the .... day of ..... 19.., did .....

And Whereas, The said justice did thereupon adjudge and determine that the said ..... was guilty of the aforesaid charge and the said ..... was thereupon convicted of the offense aforesaid, of being a disorderly person, in that he, the said ....., at the ..... aforesaid, on the .... day of ....., 19.., did .....

And Whereas, Prior to such conviction, the said ..... was required to give security by a written undertaking, with ..... surety.... in the sum of ..... hundred dollars, that he would support his wife and children and would indemnify the ..... against their becoming, within one year, chargeable upon the public; and inasmuch as the said ..... has not given the said undertaking required as aforesaid, the said ..... was, by the said justice, convicted of being a disorderly person as aforesaid, and the said justice having duly made up and signed by him with his name of office and immediately filed in the office of the clerk of the county of ..... a record of such conviction of the said .....

These are, therefore, to command you, the said constable, marshal or policeman, forthwith to carry and deliver the said ..... into the custody of the said sheriff. And you, the said sheriff, are hereby commanded to receive the said ..... into your custody in the county jail of said county, and there safely keep him in said county jail for the term of ..... at hard labor, or until he give the said security required as aforesaid.

Given under my hand, at the ..... aforesaid, this .... day of .....

.....,
Justice of the Peace (or Police Justice).

No. 155.

Warrant to commit a disorderly person for not giving security to support his wife and children, etc.—Plea of not guilty.

(Crim. Code, § 903.)

JUSTICES' COURT (OR OTHER COURT).

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To .....:

Whereas, On the .... day of ....., ... was brought before me, ..., one of the justices of the peace, in and for the ..... and county of ....., and police justice of said city, charged upon the complaint, on oath, of ..... with having on ..... day of ....., at the ..... aforesaid, been a disorderly person, for that the said .....

And Whereas, The said justice immediately, and before any further pro-

ceedings were had, informed the said ..... of the charge against him and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and then distinctly read and stated to the said ....., who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of the said .....

And Whereas, The said testimony was given and evidence had in the presence and hearing of the said ....., he, the said ...., having previously thereto been allowed a reasonable time to send for and advise with counsel;

And Whereas, The said justice did thereupon adjudge and determine that the said ..... was guilty of the aforesaid charge, and the said ..... was thereupon duly convicted of the offense aforesaid, to wit, of being a disorderly person, in that the said ..... at the ..... aforesaid on the said .... day of ..... did .....

And Whereas, Prior to such conviction, the said ..... was required to give security by a written undertaking with ..... suret...., in the sum of ..... hundred dollars that he would support his wife and children, and would indemnify the ..... against their becoming within one year chargeable upon the public; and inasmuch as the said ..... did not give the said undertaking required as aforesaid, the said ..... was by the said justice convicted of being a disorderly person as aforesaid, and the said justice having duly made up and signed by him with his name of office, and immediately filed in the office of the clerk of the county of ..... a record of such conviction of the said .....

These are, therefore, to command you, the said constable, marshal or policeman, forthwith to carry and deliver the said ..... into the custody of the said sheriff; and you, the said sheriff, are hereby commanded to receive the said ..... into your custody in the county ..... of said county, and there safely keep him in said county jail for the term of ..... at hard labor, or until he give the said security required as aforesaid.

Given under my hand at the ..... aforesaid, this .... day of ....,

Justice of the Peace (or Police Justice).

No. 156.

Warrant to commit a disorderly person for not giving security for good behavior—Plea of guilty.

(Crim. Code, §§ 901, 903).

JUSTICES' COURT (OR POLICE COURT).

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK.

To ..... GREETING:

Whereas, On the .... day of ....., ... was brought

before me, ..., one of the justices of the peace in and for the ....., and county of ....., or police justice of the said city, charged upon the complaint on the oath of ....., with having, on the ....day of ....., at the ..... aforesaid, been a disorderly person, for that the said .....

And Whereas, The said justice immediately, and before any further proceedings were had, informed the said ..... of the charge against h....., and of h... right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said ....., and .. he, the said ....., was given a reasonable time to send for and advise with counsel;

And Whereas, He, the said ....., did then and there plead guilty to the said charge, and in the presence of the said court, by said plea of guilty, did voluntarily admit and confess that ..he, the said ....., at the ..... aforesaid, on the .... day of ....., did .....

And Whereas, The said justice did thereupon adjudge and determine that the said ..... was guilty of the aforesaid charge, and the said ..... was thereupon convicted of the offense aforesaid, of being a disorderly person, in that ..he, the said ....., at the city of ..... aforesaid, on the .... day of ..... 19.., did .....

And Whereas, Prior to such conviction the said ..... was required to give security by a written undertaking with ..... suret.... in the sum of ..... hundred dollars, for h.. good behavior for the space of one year, and inasmuch as the said ..... did not give the said undertaking required as aforesaid, the said ..... was by the said justice convicted of being a disorderly person as aforesaid, and the said justice having duly made up and signed and immediately filed in the office of the clerk of the county of ..... a record of such conviction of the said .....

These are, therefore, to command you, the said constable, marshal or policeman, forthwith to carry and deliver the said ..... into the custody of the said sheriff. And you, the said sheriff, are hereby commanded to receive the said ..... into your custody in the county jail of said county, and there h.. safely keep in said county jail, for the term of ....., at hard labor, or until ..he give the said security required as aforesaid.

Given under my hand, at the ..... aforesaid, this ..... day of ....., 19..

.....,

Police Justice (or Justice of the Peace).

No. 157.

Warrant to commit a disorderly person for not giving security for good behavior—Plea of not guilty.

(Crim. Code, §§ 901, 903.)

JUSTICES' COURT (OR POLICE COURT).

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To ....., GREETING:

Whereas, On the .... day of ....., ... was brought before me, ..., one of the justices of the peace in and for the ..... and county of ....., police justice of said city, charged upon the complaint on oath of ..... with having, on the .... day of ..... at the city of ..... aforesaid, been a .....

And Whereas, The said justice immediately, and before any further proceedings were had, informed the said ..... of the charge against h... and of h... right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said ....., who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of the said .....

And Whereas, The said testimony was given and evidence had in the presence and hearing of the said ....., he, the said ...., having previously thereto been allowed a reasonable time to send for and advise with counsel;

And Whereas, The said justice did thereupon adjudge and determine that the said ..... was guilty of the aforesaid charge, and the said ..... was thereupon duly convicted of the offense aforesaid, to wit, of being a disorderly person, in that the said ....., at the ..... aforesaid, on the said .... day of ....., did ....

And Whereas, Prior to such conviction the said ..... was required to give security by a written undertaking with ..... suret ..... in the sum of ..... hundred dollars, for h... good behavior for the space of one year, and inasmuch as the said ..... did not give the said undertaking required as aforesaid, the said .... was by the said justice convicted of being a disorderly person as aforesaid, and the said justice having duly made up and signed and immediately filed in the office of the clerk of the county of ..... a record of such conviction of the said .....

These are, therefore, to command you, the said constable, marshal or policeman, forthwith to carry and deliver the said ..... into the custody of the said sheriff. And you, the said sheriff, are hereby commanded to receive the said ..... into your custody in the county jail of said county, and there h... safely keep in said county jail,

for the term of ..... at hard labor, or until ..he give the said security required as aforesaid.

Given under my hand, at the ..... aforesaid, this .... day of .....,

Police Justice (or Justice of the Peace).

No. 158.

Warrant of commitment after conviction.

(Crim. Code, § 487.)

(Title of Court.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To ..... and to the keeper of the jail or prison to which the prisoner is sentenced:

Whereas, ... was on the .... day of ....., duly tried before me and a jury, and by said jury was convicted of the crime of ...., and afterward was, by me, in due form of law, sentenced to imprisonment in the county jail for the term of one year [or fine and imprisonment, as the case may be]. Now, this is to command you to receive the said ..... into your custody and detain him until the judgment of the said court is satisfied.

Dated this .... day of ....., 19..

A. B.,
Justice Supreme Court (or other court).

No. 159.

Death warrant.

(Crim. Code, § 491.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

To the agent and warden of the ..... prison at ....., ... county, N. Y.:

Whereas, At a Trial Term of the Supreme Court, held in and for the county of ....., at the ..... in the ..... of ....., N. Y., on the .... day of ....., 19.. and on following days, one .... was put upon his trial for the murder of ..... in said county of ..... on the .... day of ....., 19.., and upon said trial was found guilty of murder in the first degree, for said killing on the .... day of ....., 19.., and on the .... day of ....., 19.., was sentenced to be put to death in the manner provided by law, on some day in the week beginning the .. day of ....., 19.., now:

It is hereby ordered, that execution of the said sentence be done upon said ..... by you, the said warden of ..... prison, in the

manner provided by law, on such day in the week beginning on the .... day of ....., 19.., as you shall determine, within the walls of your said prison or the yard or inclosure thereto adjoining.

Witness my hand at ....., aforesaid, this .... day of ....., 19..

.....,
Justice Supreme Court, Presiding.

No. 160.

Certificate after execution.

(Crim. Code, § 508.)

..... COURT—COUNTY OF .....

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

I, ..., agent and warden of ..... State prison at ....., ... county, do hereby certify, pursuant to section 508 of the Criminal Code, and the amendments thereto, that in obedience thereto and in conformity with the judgment and sentence of the above-named court, and the warrant of the said court, a copy of which is hereto annexed, I, said agent and warden, at said prison at ....., town of ....., county of ....., N. Y., on the .... day of ....., 19.., did attend upon the execution of the judgment and sentence, and that said ...., the convict therein named, was then and there, to wit, at the place and time last aforesaid, executed in conformity to the said judgment and sentence of said court and in accordance with the provisions of the Criminal Code of the State of New York.

I do further certify that the persons whose names are hereinafter signed were the persons invited by me as such agent and warden to be present at such execution, and that the said persons were all the persons present and witnessing the execution of said judgment and sentence upon said .....

.....,
Agent and Warden.

Dated, ... county, State of New York, this .... day of ....., 19..

The undersigned, being the persons and all the persons present witnessing the execution of judgment and sentence set forth in the foregoing certificate, do hereby, pursuant to the statute, and at Dannemora, town of Dannemora, county of ....., State of New York, on the .... day of ....., 19.., subscribe the foregoing certificate.

(Signatures.)

No. 161.

Notice of appeal.

(Crim. Code, § 522.)

SUPREME COURT—COUNTY OF .....

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

To ....., *Clerk of the county of* ....., *and to* .....
....., *District Attorney of* ..... *county:*

SIRS.—Please to take notice that the defendant herein hereby appeals to the Appellate Division of the Supreme Court in and for the department [or Court of Appeals] from the judgment of conviction rendered against him in this court on the .... day of ....., 19..

.....,

Dated this .... day ....., 19..

.....,
Attorney for Defendant.

No. 162.

Notice of appeal by the people.

(Crim. Code, § 524.)

(Title of court and causes as above.)

To ....., *Defendant, or* ....., *Attorney for Defendant:*

SIR—Please to take notice that the people hereby appeal to the Appellate Division of the Supreme Court from the judgment of this court, allowing defendant's demurrer to the indictment, rendered the .... day of .....

Dated this .... day of ....., 19..

District Attorney of ..... *County.*

No. 163.

Affidavit for publication of notice of appeal.

(Crim. Code, § 524.)

(Title.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, says that he is district attorney of the county of .....; that at a term of the court of ..... held in and for the county of ....., on the .... day of .....,

19.., judgment was rendered allowing the demurrer to the indictment here interposed by this defendant; that the people have appealed from said judgment; that said defendant cannot be found, after due diligence, so as to make service upon him of the notice of this appeal; that ....., the attorney who acted for the defendant on the argument of said demurrer, does not reside or transact business in the county of .....

.....

Subscribed and sworn before me,
this .... day of .....

....,

.....

No. 164.

Order of publication.

(Crim. Code, § 524.)

(Title.)

On reading and filing the affidavit of ....., hereto annexed, and on motion of ....., district attorney of the county of ....., it is hereby ordered, that the notice of appeal on behalf of the people be served on ....., the defendant herein, by publishing the same in the ....., a daily paper published at ....., in the State of New York, for the space of ..... weeks, in each issue thereof.

Dated this .... day of ....., 19..

....,
Justice Supreme Court.

No. 165.

Affidavit of publication.

(Crim. Code, § 525.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

....., being duly sworn, says that he is the publisher and proprietor of the daily ....., published at ..... that the annexed notice of appeal was published in each issue of said paper for the space of ..... weeks, commencing on the .... day of .....

.....

Subscribed and sworn before me,
this .... day of .....

....,

.....

No. 166.

Certificate of reasonable doubt.

(Crim. Code, § 527.)

(Title.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

I, ..., who presided at the trial of ....., the above-named defendant, on an indictment charging the said ..... with the crime of ....., and who was convicted of said crime by a jury on said trial, on the .... day of ....., 19.., do hereby certify that in my opinion there is reasonable doubt whether said judgment should stand.

Dated at ....., this .... day of ....., 19..

.....,
Justice Supreme Court.

No. 167.

Notice of application for certificate on appeal.

(Crim. Code, § 529.)

(Title.)

SIR.—Please to take notice that the defendant herein will apply to Hon. ....., the judge who presided at the trial wherein he was convicted of the crime of ....., for a certificate that there is a reasonable doubt as to whether or not the judgment of said court should stand, pursuant to section 527 of the Criminal Code.

Dated at ....., this .... day of ....., 19..

.....,
Defendant's Attorney.

To ....., *District Attorney of* ..... *county.*

No. 168.

Notice of argument.

(Crim. Code, § 537.)

(Title.)

To ....., *District Attorney of* ..... *county:*

SIR.—Please to take notice that defendant's appeal in the above-entitled action will be brought on for argument before this court at the next General Term thereof, to be held at ....., in the city of ....., on the .... day of ....., at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated at ....., this .... day of ....., 19..

Yours, etc.

.....,
Defendant's Attorney.

No. 169.

Order for reversal and ordering a new trial.

(Crim. Code, § 543.)

At a term of the Appellate Division of the Supreme Court of the State of New York held in and for the ..... department, at ....., on the .... day of .....

PRESENT—Hon. .....,
.....,
.....,
Justices.

THE PEOPLE OF THE STATE OF NEW YORK
against
.....

This cause having been heretofore, on the .... day of ....., brought on for argument, and after hearing ....., Esq., of counsel for defendant, and ....., district attorney of ..... county, for the people, and the court having deliberated thereon,

It is ordered and adjudged, that the judgment of conviction in the above-entitled action be reversed [or as the case may be], and that said defendant ..... have a new trial, which is hereby ordered; and it is further ordered, that the proceedings herein be and the same are hereby remitted to the court of ..... county.

.....,
Clerk.

No. 170.

COMPROMISE OF MISDEMEANOR.

Acknowledgment of satisfaction by prosecutor.

(Crim. Code, § 664.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

I, ..., of the town of ....., county of ....., State of New York, do hereby acknowledge to have received of ...., of the same place, the sum of ..... dollars in full satisfaction for the injury to me at said town of ....., on the .... day of ..... by said ....., in assaulting and beating me, and for which assault and battery I made complaint on oath on the .... day of ....., before ....., one of the justices of the peace [or other officer], and which said complaint is now pending and undetermined; and I desire that no further proceeding be had against said .....

(Signed) .....

COUNTY OF ....., *ss.:*

I hereby certify that, on this .... day of ....., before me personally appeared ..... of ....., in said county, personally known to me to be the same person mentioned in and who executed the foregoing acknowledgment of satisfaction; and he acknowledged the execution of the same.

.....,

Justice of the Peace.

No. 171.

Warrant to discharge defendant after compromise.

(Crim. Code, § 663.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To the keeper of the common jail of said county:

Whereas, ..., upon whose oath ..... was arrested for ..... against the said ....., and was duly committed to your charge on the .... day of ....., and who now remains under your care;

And Whereas, The said ..... has duly executed an acknowledgment of satisfaction for said assault before me;

Now, this is to command you forthwith to discharge the said .... from your custody in said jail, unless detained upon some other warrant of commitment.

Dated at ....., this .... day of ....., 19..

.....,

Justice .....

No. 172.

Orderdischarging undertaking on settlement of case.

COUNTY OF ....., *ss.:*

The within-named complainant ....., having this day appeared before me, ..., a justice of the peace of the county of ....., and acknowledged in writing that he had received full satisfaction of the within-named ....., for the injury complained of, I do hereby order the within undertaking to be discharged.

Dated at ....., this .... day of ..... 19..

.....,

Justice .....

No. 173.

Application to inquire regarding charge of bastardy.

(Crim. Code, § 840.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

To ....., *a justice of the peace [or police justice] in and for the county of* .....:

....., being pregnant with child which is likely to be born a bastard, and to become chargeable to the [county, city or town, as the case may be], the undersigned, one of the ..... of the poor of the ..... of ....., N. Y., where the woman now is [or an overseer of the poor or officer of the almshouse], hereby makes an application to you, pursuant to section 840 of the Criminal Code, to inquire into the facts and circumstances of the case.

.....

Dated at ....., this .... day of ....., 19..

No. 174.

Examination of a mother of a bastard before birth.

(Crim. Code, § 841.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

The voluntary examination of ....., of the ..... of ....., in said county of ....., taken in writing on oath before me, ..., a justice of the peace of said county, at ....., on the .... day of ....., the said ....., on her oath before me, said that she is now with child, and has been so for about ..... months last past, and that said child is likely to be born a bastard, and to become chargeable to the county of [or town] ....., and that ....., of ....., in said town of ....., in said county, is the father of said bastard child; that for one year last past she has been an unmarried woman.

(Signed) .....

Subscribed and sworn before me,

this .... day of .....

.....,

.....

No. 175.

Examination after birth of child.

(Crim. Code, § 841.)

(Formal part as in No. 130.)

And the said ....., on her oath before me taken as above stated, says that on the .... day of ....., at the ..... of ...., in said county, she was delivered of a male child, which is chargeable to said town of [or county of] ....., and that ....., of the town of ....., in said county, is the father of the said child.

(Signed) .....

Subscribed and sworn before me,
this .... day of .....

.....,
.....

No. 176.

Warrant for the arrest.

(Crim. Code, § 841.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To any peace officer of said county, GREETING:

Whereas, Upon the application of ....., overseer of the poor of ..... [or the town of], duly made to me, ..., a justice of the peace of said county, I have ascertained by the examination on oath of ....., of the town of ....., in said county; that she, the said ....., is now pregnant of a child, or [was delivered of a child on the .... day of, etc.], which child is likely to become a charge against said county of [or town of] ....., and that ..... of the town of ....., in said county, is the reputed father of said child.

Now, you are hereby commanded forthwith to arrest the said .... and bring him before me in the town of ..... in said county of ....., for the purpose of having an adjudication respecting the filiation of said child likely to be born [or born] a bastard.

Dated at ....., this .... day of .....

.....,

Justice of the Peace (or Police Justice).

No. 177.

Indorsement to be made upon the warrant when the putative father is in another county.

(Crim. Code, § 844.)

I, ..., the justice of the peace who issued the within warrant, hereby direct that any bond which shall be taken of ....within named ..... shall be in the sum of ..... dollars.

Dated at ....., this .... day of .....

.....,

Justice of the Peace (or Police Justice).

No. 178.

Indorsement to be made where warrant is to be executed in another county.

(Crim. Code, § 843.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

Due and proper proof upon oath having been made before me ...., a justice of the peace of the county of ....., that the name or ....., purporting to be subscribed to the within warrant, is in the handwriting of said ....., the within-mentioned justice of the peace, and I do hereby authorize the arrest of the within-named ....., in the said county of .....

Dated at ....., this .... day of .....

.....,

Justice.

No. 179.

Undertaking on arrest in another county.

(Crim. Code, § 844.)

Whereas, ... has this day been brought before the undersigned, one of the justices of the peace of the county of ....., N. Y., by virtue of a warrant issued by ....., one of the justices of the peace of the county of ....., N. Y., whereon is duly indorsed a direction that it be served in the county of ....., N. Y., in which warrant it is recited that ..... of ....., in said county of ....., upon her examination on oath, before the said ....., justice, did declare herself pregnant of a child which is likely to be born a bastard, and to become chargeable to said ..... [or], did declare that she was on the .... day of ....., at ..... aforesaid, delivered of a bastard child which is chargeable

to said .....; and upon the said warrant is indorsed the direction of the said ..... that the sum in which the said defendant should give security should be .... dollars.

Now, therefore, we, ..., defendant, of ....., and ....., residing at the ..... of ....., in the county of ....., N. Y., by occupation a ....., and ...., residing at the ..... of ....., in the county of ....., N. Y., by occupation a ....., sureties, do hereby jointly and severally undertake that the said ....., defendant [here insert one of the conditions of section 844 of the Criminal Code] .....

And if he fail to perform said condition we will pay to the people of the State of New York ..... hundred dollars.

[Add acknowledgment, justification and approval.]

.....
.....
.....

No. 180.

Certificate to be indorsed upon warrant on discharge.

(Crim. Code, § 845.)

COUNTY OF ....., *ss:*

I, ..., a justice of the peace of the county of ...., before whom the within-named ..... was brought, he having been arrested in said county of ....., after it had been indorsed by me [or by another justice of said county of .....], do hereby certify that the said ..... has executed an undertaking, with two sureties, in the sum indorsed upon the warrant, and required according to the statute in such case made and provided, and which is herewith delivered to ....., the officer who brought the within warrant; and that I have thereupon discharged the said .... from arrest upon the within warrant.

Dated at ....., this .... day of ....., 19..

.....,
Justice of the Peace.

No. 181.

Undertaking on adjournment.

(Crim. Code, § 849.)

STATE OF NEW YORK, }
COUNTY OF ....., } *ss.:*

Whereas, The undersigned defendant, ..., has this day been brought before ..... and ....., justices of the peace in said county, charged upon the oath of ....., of

the ..... of ....., in the county of ....., aforesaid, with being the reputed father of a bastard, with which the said ..... is pregnant [or if a bastard child lately born of the said .....], and which is chargeable to the ..... of ....., N. Y., and the said justices having associated pursuant to the provisions of the Criminal Code, to inquire into the charge and adjudicate respecting the filiation and maintenance of said bastard, and said justices having, on the application of the defendant, for good cause, determined to adjourn the said examination, upon the execution of this undertaking, until the .... day of ....., 19.., at ..... o'clock in the ..... noon, at the office of the said justice, ..., at the town of ..... in the county aforesaid,

Now, therefore, We, ..., defendant, residing at ....., in the ..... of ....., county of ....., N. Y., by occupation a ....., and ....., surety, residing at ....., in the ..... of ....., county of ....., N. Y., by occupation a ....., ..., and ....., surety, residing at ....., in the ..... of ....., county of ....., N. Y., by occupation a ....., hereby jointly and severally undertake that the above-named ....., defendant, will personally appear before the magistrates at the said time and place appointed for such examination, above designated; and not depart therefrom without leave of said justices; or in default thereof, the undersigned sureties will pay the sum of ..... dollars, hereby fixed by said magistrates.

Dated at ....., N. Y., this .... day of ....., 19..

.....,
Defendant.

.....
.....

[Add acknowledgment, justification and approval.]

No. 182.

Order of filiation.

(Crim. Code, § 850.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

THE PEOPLE OF THE STATE OF NEW YORK
against
..... Defendant.

Whereas, We, the undersigned, justices of the peace of the ..... of ..... in said county, have, in pursuance of the statute, upon the application of ....., ... of the poor of the ..... of ....., N. Y., duly associated for the purpose of inquiring into the charge, and determining concerning a certain bastard child, of which ..... of the ....., N. Y., is pregnant [or, has lately been delivered], and of which child ..... said defendant is alleged to be the father.

And Whereas, We have duly examined the said ..... on oath, in presence of the said defendant, in respect to the said charge, and have also heard all testimony to us offered in relation thereto, as well on the part and behalf of the said ..... of the poor as of the said ....., defendant, whereby it appears that the said .... was on the .... day of ....., 19.., delivered of a bastard child [or] is pregnant of a child likely to be born a bastard, which is chargeable to the ..... of ....., N. Y., and that the said defendant, ..., is the father of said child.

We, therefore, upon examination of the matter and inquiring into said charge, and upon hearing the testimony, as aforesaid, do adjudge, determine and certify that he, the said defendant, ..., is the father of the said bastard child,

And thereupon we order, That said ....., defendant, pay to the said ..... of the poor, of the ..... of ....., N. Y., for the support of the said bastard, the weekly sum of ..... dollars.

And, it appearing to us, and we finding the said mother, ..., is indigent, we determine and order that said defendant pay to the said ....., for the support of the said mother, ..., during her confinement and recovery therefrom, the sum of ..... dollars, and in case said bastard child shall die, that said defendant pay the necessary funeral expenses. And we do hereby certify the reasonable costs of arresting the said defendant, and of the order of filiation, at the sum of ..... dollars and ..... cents.

Given under our hands at the ..... of ....., N. Y., this .... day of ....., 19..

.....,
.....,
Justices of the Peace.

No. 183.

Undertaking for support, etc.

(Crim. Code, § 851, subd. 1.)

STATE OF NEW YORK, } *ss.:*
COUNTY OF ....., }

Whereas, The undersigned, defendant, has been charged upon the oath of ....., of the ..... of ....., in the county of ....., N. Y., with being the father of a bastard, and which is chargeable to the [county, city or town] ..... of ....., N. Y., and a warrant having been issued to apprehend said defendant, by ....., a justice of the peace of the county of ....., N. Y.; and said magistrate having associated with him ....., a justice of the peace in and for said ....., and said magistrates having inquired into the charge, and upon the hearing having adjudged said defendant to be the father of such bastard, and having made an order of filiation specifying therein that the above-named, ..., defendant and reputed father, should pay to the ..... of the poor of the ..... of ....., N. Y., the sum of ..... dollars, weekly [or otherwise as

the case may be], for the support of the said bastard; and also, that the said defendant should pay to the said ..... of the poor the sum of ..... dollars for the support of the said ..... mother, during her confinement and recovery therefrom, and in case said bastard child shall die, that said defendant should pay the necessary funeral expenses. And in and by the said order the reasonable costs of arresting the said defendant and of said order of filiation were certified at the sum of ..... dollars; and said defendant having paid the amount so certified for the costs of the arrests and of the order of filiation; and said defendant desiring to be discharged from such arrest, pursuant to the provisions of the Criminal Code:

Now, therefore, We ....., defendant, residing at ....., in the ..... of ..... county of ....., N. Y., by occupation a ....., and ....., surety, residing at ....., in the ..... of ....., county of ....., N. Y., by occupation a .....; and ....., surety, residing at ....., in the ..... of ....., county of ....., N. Y., by occupation a ....., hereby undertake that the above-named ...., defendant, will pay weekly, ... the sum of ..... dollars, directed, for the support of the said child, and of the mother during her confinement and recovery, or which may be ordered by the County Court of the county of ....., N. Y., and that he will indemnify the ..... of ....., N. Y., where the bastard was [or may be] born, and every other county, town or city which may have been or may be put to expense for the support of the bastard, or of its mother during her confinement and recovery, against those expenses, or that the undersigned sureties will do so, not exceeding the sum of ..... dollars, fixed by the said magistrates; [or if for appearance in the County Court, see Crim. Code, § 851, subd. 2].

Dated at ..... of ....., N. Y., this .... day of ....., 19..

.....,

Defendant.

(Add acknowledgment, justification and approval.)

.....

.....

No. 184.

Commitment.

(Crim. Code, § 852.)

THE PEOPLE OF THE STATE OF NEW YORK,

To any peace officer of ..... county, and to the keeper of the county jail of said county, GREETING:

Whereas, By an order of filiation duly made the .... day of ....., 19.., by ..... and ....., two of the justices of the peace of the ..... of ....., in said county, ... is adjudged to be the father of a bastard child,* of which ..... of the ....., N. Y., is pregnant [or, has lately been delivered], which said child is chargeable to the ..... of ....., N. Y., which said order of filiation was

duly made, after due examination, upon application by .... of the poor of the ..... of ....., N. Y.

And Whereas, By said order the said ..... was further directed to pay to the ..... of the poor of the ..... of ....., N. Y., the sum of ..... dollars, weekly, for the support of said bastard child; and also the sum of ..... dollars, directed to be paid by the said ..... for the support of the said ..... during her confinement and recovery, she being found to be indigent; and in case said bastard child shall die the said ..... pay the necessary funeral expenses, and in and by said order the reasonable costs of arresting the said defendant, ..., and of the order of filiation, were certified at the sum of ..... dollars.

And Whereas, The said ..... was present at the making of such order and determination, and which, together with all other proceedings, was by said justices reduced to writing, and subscribed by them, and was required by them to pay the said costs, and enter into an undertaking, with sufficient sureties, to be approved by them, according to section 851 of the Criminal Code of the State of New York, in the sum of ..... dollars.

And Whereas, The said ..... has neglected to pay such costs and enter into such undertaking as aforesaid:

These are, therefore, to command you, the said peace officer, to take the said ..... and convey and deliver him to the keeper of the common jail of the county of .....

And you, the said keeper, are hereby commanded to receive the said .... into your custody, in said jail, and there safely keep him until he be discharged by the County Court of the county of ....., N. Y., or pay said costs and deliver an undertaking as prescribed by section 851 of the Criminal Code.

Given under our hands at the ..... of ....., N. Y., the .... day of ....., 19..

....., ...

Justices.

No. 185.

Warrant for discharge of father after commitment.

COUNTY OF ....., *ss.:*

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To the keeper of the common jail of the county of .....:

Whereas, ... was, on the .... day of ....., duly committed to your custody on a warrant issued under our hands, for disobeying an order of filiation, whereby he was adjudged to be the putative father of a bastard child, of which ..... was then supposed to be pregnant;

And Whereas, It now appears that said ..... was not in fact pregnant at all [or married before delivery];

Now you are hereby commanded to forthwith discharge from your custody the said ....., unless he be there lawfully detained on some other warrant.

Dated at ....., this .... day of ....., 19..

.....,
.....,
Justices of the Peace (or Police Justices).

No. 186.

Order where prisoner is acquitted on ground of insanity.

(Crim. Code, § 454.)

SUPREME COURT.

IN THE MATTER OF ....., ACQUITTED ON GROUND OF INSANITY.

Whereas, The jury upon the trial of an action by the People of the State of New York against ....., charged by indictment with the crime of ....., have acquitted the said ..... upon the ground of insanity, duly certified by said jury, under the instructions of the court, which certificate is now on file in the ..... county clerk's office; and this court having thereupon carefully inquired and ascertained whether his insanity still continues, and being fully satisfied his insanity does still continue, and that his discharge would be dangerous to the public peace and safety, it is hereby ordered, in pursuance of section 454 of the Criminal Code, that the said ..... be kept in custody, and for that purpose be sent to the State Lunatic Asylum at ....., and the sheriff of ..... county is hereby empowered and commanded to carry this order into effect, and to take the said ..... to said asylum, to be there kept until he becomes sane.

Dated at ....., this .... day of ....., 19..

.....,
Justice Supreme Court.

No. 187.

Order for commission to inquire as to insanity of prisoner before trial.

(Crim. Code, § 658.)

At a ..... term of the ..... Court, held in and for the county of ....., at the ..... in the ..... of ....., on the .... day of ....., 19...

PRESENT—HON. ....., *Justice.*

..... COURT, ... COUNTY.

IN THE MATTER OF THE APPLICATION TO INQUIRE INTO THE INSANITY OF ..... NOW UNDER INDICTMENT.

It having been made to appear to me that ....., a person indicted by the last grand jury of the county of ....., of the crime of ....., is a person of unsound mind and wholly irresponsible, I do, therefore, in pursuance of section 658 of the Criminal Code, hereby appoint ....., M. D., ..., counselor-at-law, and ....., all of the county of ....., a commission forthwith to examine into the mental condition of the said ....., at the time of the commission of the crime charged [or] at the time of the examination, and make their report of the facts with their opinion thereon to this court, with all convenient speed, and due notice of the time and place of executing this commission be given to the district attorney of ..... county.

....., *Justice Supreme Court.*

No. 188.

Notice to district attorney of appointment of commission.

(Crim. Code, § 658.)

(Title.)

To Hon. ....., District Attorney of ..... county:

SIR.—Please to take notice that pursuant to an order of the Supreme Court of the State of New York, heretofore duly made and filed, the undersigned, as commisisoners to inquire into the mental condition of ....., now confined in the ..... county jail, charged with the crime of ....., will proceed to execute their said commission, at the said ..... jail, on the .... day of ....., 19.., at ..... o'clock ..M. of that day.

Dated at ....., this .... day of ....., 19..

Yours, etc.,

(Signed) .....,
.....,
.....,
Commissioners.

No. 189.

Order for commission to inquire as to insanity of defendant during trial.

At a ..... term of the ..... Court, held in and for the county of ....., at the ..... in the ..... of ....., on the ..... day of ....., 19..

PRESENT—HON. ....., *Justice.*

..... COURT, ... COUNTY.

IN THE MATTER OF THE APPLICATION TO IN QUIRE INTO THE INSANITY.
OF
.....
NOW UNDER INDICTMENT.

Upon suggestion upon the record made by the district attorney, orally, and by the presentation of the affidavits of physicians (the date of verification to each affidavit should be stated), and the exhibits thereto attached in support of such suggestion that the defendant, ..., is now in such a state of lunacy or insanity as to be incapable of understanding the proceedings against him or making his defense, and the affidavits of ..... and the exhibits attached thereto in opposition.

I do, therefore, appoint ....., three disinterested persons, a commission to forthwith to examine into the mental condition of said ..... and to report to the court with all convenient speed the facts and their opinions, whether, at the time of said examination, the said ..... was in such a state of idiocy, imbecility, lunacy or insanity so as to be incapable of rightly understanding his own condition and the nature of the charges against him and conducting his defense in a rational manner.

.....,
Justice Supreme Court.

No. 190.

Oath of grand jurors.

(Code Crim. Proc., § 246.)

"The same oath which your foreman has now taken before you, on his part, you and each of you shall well and truly observe on your part. So help you God!"

No. 191.

Oath of foreman of grand jury.

(Code Crim. Proc., § 245.)

You, as foreman of this grand jury, shall diligently inquire, and a true presentment make, of all such matters and things as shall be given you in charge; the counsel of the people of this State, your fellows and your own you shall keep secret; you shall present no person from envy, hatred, or malice; nor shall you leave any one unpresented through fear, favor, affection, or reward, or hope thereof, but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God!

DISTRICT ATTORNEY'S CERTIFIED STATEMENT OF PERSONS CONVICTED OF CRIME. — [*Code Crim. Proc.*, § 941.]

NAME OF CONVICT.	Crime of which convicted.	Conviction on trial or plea of guilty.	Counsel assigned by court to defend.	Sentence.	Place of confinement.	Sex.	Age.	Nativity.	Color.	Residence.	Occupation.	Married or single.	What secular instruction.	What religious instruction.	Parents.	Former offence.	Habits of life — temperate or intemperate.

To the Clerk of the County of .....:

I hereby certify that the foregoing is a correct statement of all persons convicted of crime at the ..... Term, 190.., of the Court ....., of the County of .....

Dated, ..., ..., 190..

....,

District Attorney of ..... County.

The Commutation allowed by law for Good Behavior is Two Months for the First Year, Two Months for the Second Year, Four Months for the Third and Fourth, and Five Months each for the Fifth and all subsequent Years.

Laws 1909, ch. 47, sections 230-248.

TABLE Showing Commutation on Sentences for Years from 1 to 35 inclusive.

Sent.	Commutation.		Sent.	Commutation.		Sent.	Commutation.		Sent.	Commutation.		Sent.	Commutation.	
Years.	Years.	Months.	Years.	Years.	Months.	Years.	Years.	Months.	Years.	Years.	Months.	Years.	Years.	Months.
1	....	2	8	2	8	15	5	7	22	8	6	29	11	5
2	....	4	9	3	1	16	6	....	23	8	11	30	11	10
3	....	8	10	3	6	17	6	5	24	9	4	31	12	3
4	1	....	11	3	11	18	6	10	25	9	9	32	12	8
5	1	5	12	4	4	19	7	3	26	10	2	33	13	1
6	1	10	13	4	9	20	7	8	27	10	7	34	13	6
7	2	3	14	5	2	21	8	1	28	11	....	35	13	11

COMMUTATION ON SENTENCES FOR YEARS AND MONTHS FROM 1 TO 35 YEARS INCLUSIVE.

Sentence.		Commutation.			Sentence.		Commutation.			Sentence.		Commutation.			Sentence.		Commutation.		
Yrs.	Mos.	Yrs.	Mos.	Days	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.
1	..	..	2	....	3	2	..	8	20	5	4	1	6	20	7	6	2	5	15
1	1	..	2	5	3	3	..	9	....	5	5	1	7	2½	7	7	2	5	27½
1	2	..	2	10	3	4	..	9	10	5	6	1	7	15	7	8	2	6	10
1	3	..	2	15	3	5	..	9	20	5	7	1	7	27½	7	9	2	6	22½
1	4	..	2	20	3	6	..	10	....	5	8	1	8	10	7	10	2	7	5
1	5	..	2	25	3	7	..	10	10	5	9	1	8	22½	7	11	2	7	17½
1	6	..	3	....	3	8	..	10	20	5	10	1	9	5	8	..	2	8	....
1	7	..	3	5	3	9	..	11	....	5	11	1	9	17½	8	1	2	8	12½
1	8	..	3	10	3	10	..	11	10	6	..	1	10	....	8	2	2	8	25
1	9	..	3	15	3	11	..	11	20	6	1	1	10	12½	8	3	2	9	7½
1	10	..	3	20	4	..	1	..	....	6	2	1	10	25	8	4	2	9	20
1	11	..	3	25	4	1	1	..	12½	6	3	1	11	7½	8	5	2	10	2½
2	..	..	4	....	4	2	1	..	25	6	4	1	11	20	8	6	2	10	15
2	1	..	4	10	4	3	1	1	7½	6	5	2	..	2½	8	7	2	10	37½
2	2	..	4	20	4	4	1	1	20	6	6	2	..	15	8	8	2	11	10
2	3	..	5	....	4	5	1	2	2½	6	7	2	..	27½	8	9	2	11	22½
2	4	..	5	10	4	6	1	2	15	6	8	2	1	10	8	10	3	..	5
2	5	..	5	20	4	7	1	2	27½	6	9	2	1	22½	8	11	3	..	17½
2	6	..	6	....	4	8	1	3	10	6	10	2	2	5	9	..	3	1	....
2	7	..	6	10	4	9	1	3	22½	6	11	2	2	17½	9	1	3	1	12½
2	8	.	6	20	4	10	1	4	5	7	..	2	3	....	9	2	3	1	25
2	9		7	....	4	11	1	4	17½	7	1	2	3	12½	9	3	3	2	7½
2	10	..	7	10	5	..	1	5	....	7	2	2	3	25	9	4	3	2	20
2	11	..	7	20	5	1	1	5	12½	7	3	2	4	7½	9	5	3	3	2½
3	..	..	8	....	5	2	1	5	25	7	4	2	4	20	9	6	3	3	15
3	1	..	8	10	5	3	1	6	7½	7	5	2	5	2½	9	7	3	3	27½

COMMUTATION — (*Continued*).

Sentence.		Commutation.			Sentence.		Commutation.			Sentence.		Commutation.			Sentence.		Commutation.		
Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.
9	8	3	4	10	11	10	4	3	5	14	..	5	2	....	16	2	6	..	25
9	9	3	4	22½	11	11	4	3	17½	14	1	5	2	12½	16	3	6	1	7½
9	10	3	5	5	12	..	4	4	....	14	2	5	2	25	16	4	6	1	20
9	11	3	5	17½	12	1	4	4	12½	14	3	5	3	7½	16	5	6	2	2½
10	..	3	6	....	12	2	4	4	25	14	4	5	3	20	16	6	6	2	15
10	1	3	6	12½	12	3	4	5	7½	14	5	5	4	2½	16	7	6	2	27½
10	2	3	6	25	12	4	4	5	20	14	6	5	4	15	16	8	6	3	10
10	3	3	7	7½	12	5	4	6	2½	14	7	5	4	27½	16	9	6	3	22½
10	4	3	7	20	12	6	4	6	15	14	8	5	5	10	16	10	6	4	5
10	5	3	8	2½	12	7	4	6	27½	14	9	5	5	22½	16	11	6	4	17½
10	6	3	8	15	12	8	4	7	10	14	10	5	6	5	17	.	6	5	....
10	7	3	8	27½	12	9	4	7	22½	14	11	5	6	17½	17	1	6	5	12½
10	8	3	9	10	12	10	4	8	5	15	..	5	7	....	17	2	6	5	25
10	9	3	9	22½	12	11	4	8	17½	15	1	5	7	12½	17	3	6	6	7½
10	10	3	10	5	13	..	4	9	....	15	2	5	7	25	17	4	6	6	20
10	11	3	10	17½	13	1	4	9	12½	15	3	5	8	7½	17	5	6	7	2½
11	..	3	11	....	13	2	4	9	25	15	4	5	8	20	17	6	6	7	15
11	1	3	11	12½	13	3	4	10	7½	15	5	5	9	2½	17	7	6	7	27½
11	2	3	11	25	13	4	4	10	20	15	6	5	9	15	17	8	6	8	10
11	3	4	..	7½	13	5	4	11	2½	15	7	5	9	27½	17	9	6	8	22½
11	4	4	..	20	13	6	4	11	15	15	8	5	10	10	17	10	6	9	5
11	5	4	1	2½	13	7	4	11	27½	15	9	5	10	22½	17	11	6	9	17½
11	6	4	1	15	13	8	5	..	10	15	10	5	11	5	18	..	6	10	....
11	7	4	1	27½	13	9	5	..	22½	15	11	5	11	17½	18	1	6	10	12½
11	8	4	2	10	13	10	5	1	5	16	..	6	..	....	18	2	6	10	25
11	9	4	2	22½	13	11	5	1	17½	16	1	6	..	12½	18	3	6	11	7½

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.
18	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
18	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
18	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
18	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
18	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
18	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
18	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
18	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
18	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
18	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
18	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
18	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
18	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
18	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33
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21	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
21	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22

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Sentence.		Commutation.			Sentence.		Commutation.			Sentence.		Commutation.			Sentence.		Commutation.		
Yrs.	Mos	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.
30	4	11	11	20	31	7	12	5	27½	32	9	12	11	22½	33	11	13	5	17½
30	5	12	..	2½	31	8	12	6	10	32	10	13	..	5	34	..	13	6	....
30	6	12	..	15	31	9	12	6	22½	32	11	13	..	17½	34	1	13	6	12½
30	7	12	..	27½	31	10	12	7	5	33	.	13	1	....	34	2	13	6	25
30	8	12	1	10	31	11	12	7	17½	33	1	13	1	12½	34	3	13	7	7½
30	9	12	1	22½	32	..	12	8	....	33	2	13	1	25	34	4	13	7	20
30	10	12	2	5	32	1	12	8	12½	33	3	13	2	7½	34	5	13	8	2½
30	11	12	2	17½	32	2	12	8	25	33	4	13	2	20	34	6	13	8	15
31	..	12	3	....	32	3	12	9	7½	33	5	13	3	2½	34	7	13	8	27½
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31	4	12	4	20	32	7	12	10	27½	33	9	13	4	22½	34	11	13	10	17½
31	5	12	5	2½	32	8	12	11	10	33	10	13	5	5	35	..	13	11	....
31	6	12	5	15															

GREAT BRITAIN—EXTRADITION.

1842.

TREATY TO SETTLE AND DEFINE BOUNDARIES; FOR THE FINAL SUPPRESSION OF THE AFRICAN SLAVE TRADE; AND FOR THE GIVING UP OF CRIMINALS FUGITIVE FROM JUSTICE.

Concluded at Washington, August 9, 1842; Ratifications exchanged at London, October 13, 1842; Proclaimed November 10, 1842.

* * * * * * *

ARTICLE X.

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, officers, or authorities, respectively made, deliver up to justice, all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed: And the respective judges and other magistrates of the two Governments, shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive

or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge it shall be the duty of the examining judge or magistrate, to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition, and receives the fugitive.

ARTICLE XI.

* * * The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

1889.

CONVENTION SUPPLEMENTARY TO THE TENTH ARTICLE OF THE TREATY CONCLUDED AUGUST 9, 1842.

Concluded at Washington, July 12, 1889; Ratification exchanged at London, March 11, 1890; Proclaimed, March 25, 1890.

EXTRADITION Convention between the United States of America and Her Britannic Majesty, Supplementary to the Tenth Article of the Treaty, concluded between the same High Contracting Parties on the Ninth day of August, 1842.

Whereas by the Tenth Article of the Treaty concluded between the United States of America and Her Britannic Majesty on the Ninth day of August, 1842, provision is made for the extradition of persons charged with certain crimes;

And whereas it is now desired by the High Contracting Parties that the provisions of the said Article should embrace certain crimes not therein specified, and should extend to fugitives convicted of the crime specified in the said Article and in this Convention;

The said High Contracting Parties have appointed as their Plenipotentiaries to conclude a Convention for this purpose, that is to say:

The President of the United States of America, James G. Blaine, Secretary of State of the United States;

And Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honorable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

Article I.

The provisions of the said Tenth Article are hereby made applicable to the following additional crimes:

1. Manslaughter, when voluntary.

2. Counterfeiting or altering money; uttering or bringing into circulation counterfeit or altered money.

3. Embezzlement, larceny, receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.

4. Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.

5. Perjury, or subornation of perjury.

6. Rape; abduction; child-stealing; kidnapping.

7. Burglary; house-breaking or shop-breaking.

8. Piracy by the law of nations.

9. Revolt, or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.

10. Crimes and offenses against the laws of both countries for the suppression of slavery and slave-trading.

Extradition is also to take place for participation in any of the crimes mentioned in this Convention or in the aforesaid Tenth Article, provided such participation be punishable by the laws of both countries.

ARTICLE II.

A fugitive criminal shall not be surrendered, if the offense in respect of which his surrender is demanded be one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try and punish him for an offense of a political character.

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offense or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this Article, the decision of the authorities of the government in whose jurisdiction the fugitive shall be at the time shall be final.

ARTICLE III.

No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offense, committed prior to his extradition, other than the offense for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered.

ARTICLE IV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offense charged, or being material as evidence in making proof of the crime or offense, shall, so far as practicable, and if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

ARTICLE V.

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Convention, should also be claimed by one of several other Powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to that State whose demand is first received.

The provisions of this Article, and also of Articles II to IV, inclusive, of the present Convention, shall apply to surrender for offenses specified in the aforesaid Tenth Article, as well as to surrender for offenses specified in this Convention.

ARTICLE VI.

The extradition of fugitives under the provisions of this Convention and of the said Tenth Article shall be carried out in the United States and in Her Majesty's dominions, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering State.

ARTICLE VII.

The provisions of the said Tenth Article and of this Convention shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence therefor shall not have been executed.

In case of a fugitive criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction and of the sentence of the court before which such conviction took place, duly authenticated, shall be produced, together with the evidence proving that the prisoner is the person to whom such sentence refers.

ARTICLE VIII.

The present Convention shall not apply to any of the crimes herein specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date at which the Convention shall come into force.

ARTICLE IX.

This Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

It shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties, and shall continue in force until one or the other of the High Contracting Parties shall signify its wish to terminate it, and no longer.

In witness whereof the undersigned have signed the same and have affixed thereto their seals.

Done in duplicate at the city of Washington, this twelfth day of July, 1889.

[SEAL] JAMES G. BLAINE,

[SEAL] JULIAN PAUNCEFOTE.

RULES GOVERNING

APPLICATIONS FOR REQUISITIONS FOR THE RETURN OF FUGITIVES FROM JUSTICE.

The application must be made by the district attorney of the county in which the offense was committed. In interstate cases it must be in duplicate; all papers being originals, except indictments and warrants, which must be certified copies. Where extradition from a foreign country is desired, the papers must be in triplicate, as required by subdivision 6 of these rules.

The following must appear by the certificate of the district attorney:

A. The full name of the person for whom the requisition is asked, together with the name of the agent proposed, in Roman Capital letters, for example: JOHN DOE.

B. That in his opinion the ends of public justice require that the alleged fugitive be brought to this State for trial, at the public expense, and that he is willing that such expense be a county charge.

C. That he believes he has sufficient evidence to secure a conviction.

D. That the person named as agent is a proper person, a public officer (naming his official position), and has no interest in the arrest of the fugitive.

E. If there has been a former application for a requisition for the same person growing out of the same transaction, it must be so stated, giving the reasons for a second application, together with the date of such former application.

F. If the fugitive is known to be under either civil or criminal arrest, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

G. That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose, and that

if the requisition is granted, the criminal proceedings shall not be used for any of said purposes.

H. That the several sets of papers have been compared and are, in all respects, exact counterparts.

I. Whether the offense charged is a felony or a misdemeanor, with a concise definition thereof, and a particular reference to the statute defining the offense and stating the punishment therefor.

J. If more than one year has elapsed since the commission of the crime, a full explanation must be given, showing the reason for the delay. If no indictment has been found, the reasons therefor must be stated.

1. If an indictment has been found, certified copies thereof must accompany the application; and in addition thereto, if the crime charged is larceny, forgery, false pretenses, embezzlement, fraudulent sale, appropriation or disposition of mortgaged chattels, chattels held conditionally, or upon conditional sale, or sale upon memorandum; or is of a nature similar to either of those enumerated, an affidavit or affidavits must be furnished setting forth concisely the facts and circumstances. And in all such cases, whether an indictment has been found or not, the affidavit of the principal complaining witness or informant must be furnished to the effect that the application is made in good faith, for the sole purpose of punishing the accused, and that is not intended or desired to use the prosecution, or to obtain the requisition for the purpose of collecting a debt, or for any private purpose, and that if the requisition is issued it shall not be used, directly or indirectly, for any such purpose.

2. If an indictment has not been found, the facts and circumstances showing the commission of the crime charged and that the accused perpetrated the same, must be proved by depositions or affidavits taken before a magistrate in support of an information, copies of the information being also furnished. A notary public or a commissioner of deeds is not a magistrate within the meaning of the statute relating to interstate rendition or of these rules.

3. If the crime charged is seduction, corroborative evidence must be furnished by affidavit of one or more witnesses taken before a magistrate, whether an indictment has been found or not.

4. It must be shown that a warrant has been issued; and cer*tified* copies thereof and of the returns must be furnished.

5. Proof by affidavit must be made, showing the age as near as may be, and the occupation of the accused; that he was within this State at the time of the commission of the crime, has since departed therefrom and is within the State on whose Executive the requisition is to be made; whether a resident of this State or of the State to which he has fled; and when he departed from this State.

6. Where requisition upon a foreign country is desired, application must be made to the Governor, all papers being in triplicate; in other respects conforming to these rules. Further instructions with regard to international extradition may be obtained from the State Department at Washington. *The expenses in international cases, as in interstate cases, must be borne by the county from which the application comes. District attorneys ought not to make applications unless prepared to meet the expenses promptly.*

7. Where an affidavit is made by a person other than the district attorney or other public officer, the district attorney must certify that the affiant is a respectable person and entitled to credit.

8. The official character of the officer taking the affidavits or depositions, and of the officer issuing the warrants, and the genuineness of their signatures must be properly certified.

9. On the first day of January and of July in each year the district attorney must make a report to the Governor with regard to the requisitions obtained by him or his predecessor during the six months next preceding. This report must show the name of the person for whom the requisition was obtained; the date upon which it was issued; whether or not the fugitive was returned to this State, and if so, when; if not so returned, for what reason; if returned, what further proceedings have been had against him; and if the criminal proceedings have not been further prosecuted or have not been concluded, the reason therefor. All cases in which the criminal proceedings have not been concluded at the time of making the report must be reported again in the next semi-annual report, and must be so continued in each succeeding report until the case is finally disposed of. *The attention of district attorneys is particularly called to this rule, with the request that it be strictly complied with.*

FRANK W. HIGGINS.

Approved January 1, 1905.

Rules Governing Applications for Pardons and Commutations.

Rule 1. No blank forms are provided. Applications and accompanying documents should be written plainly and include the following papers and information, viz.: A certified copy of the record of conviction, the full name of the person for whom clemency is asked, the *alias* (if any) under which he was convicted, his age, the names of all other persons charged to have been connected with the same offense, a statement as to whether the applicant had been previously convicted, and if so, of what offense, and the sentence therefor.

Rule 2. The name and post-office address (with street and number, if any) of the person with whom correspondence may be had, must be endorsed or subscribed.

Rule 3. Applications will not be received asking clemency for more than one person. Separate papers must be prepared for each.

Rule 4. All the grounds upon which clemency is asked must be fully stated, and they must be substantiated by competent proof.

Especial attention is called to this rule. It must be strictly observed. *Only such grounds will be considered as are stated and proved, and no excuse whatever for not furnishing the proof will be accepted.*

Rule 5. No abstract of evidence will be received or considered unless certified by the judge before whom the conviction was had, or by the district attorney, to be a fair statement of the case.

Rule 6. When an application or petition is signed by jurors, proof by affidavit or by the certificate of the clerk of the court, must be given to the effect that the persons so signing served as jurors on the trial.

Rule 7. Except for very cogent reasons cases of sentences imposed by courts of special sessions, or of sentences to imprisonment for a term not exceeding one year, or applications for the remission of fines will not be considered.

Rule 8. It is suggested that, at least as a general rule, applications be made only by those having authority, express or implied, either from the convict himself, or from some relative or member of his family, or such other person as may be presumed to represent

him. Of course this does not apply to letters written merely in support of applications already made.

RULE 9. Papers filed will not be returned, neither will copies be furnished. Persons sending papers ought to retain such copies as they are likely to require.

RULE 10. It is suggested that applications in capital cases be presented at least two weeks before the date set for execution.

RULE 11. Counsel will not be heard in any case unless upon examination a hearing should be deemed necessary.

RULE 12. All communications should be addressed to "The Governor of the State of New York, Albany, N. Y."

CHARLES E. HUGHES.

Dated, January, 1907.



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